European Commission

From Theory to Practice: Applying the Charter of Fundamental Rights of the European Union

Training manual

This manual was produced with the contribution of several experts: Alberto Alemanno (Articles 16, 20, 38, 40, 41, 42, 43, 44, part II on Impact Assessment), Sara Al Khashlok (Article 10), Iris Anastasiadou (Article 17), Julinda Beqiraj (Articles 22, 24, 32), Rosana Garciandia (Articles 9, 46), Jean-Pierre Gauci (Articles 6, 49), Georgia Greville (Articles 15, 27, 48), Joelle Grogan (Articles 2, 3, 4, 5, 7, 12, 29, 47), Claudia Ituarte-Lima (Article 37), Alejandra Acosta Jiménez (Article 37), Nicholas Hatzis (Articles 1, 11, 13), Céline Hocquet (Article 50), Jeffrey Kenner (Articles 30, 31, 33), Morten Kjærum (Article 14), Dimitry Kochenov (Articles 21, 39), Scarlett McArdle (General Provisions part 1 and 2), Noemi Magugliani (Articles 23, 45), Sarah Ganty (Articles 21, 39), Heidi Suorsa (Introduction, Glossary, Articles 8, 25, 26, 28, 34, 35, 36), Anna Puigderrajols Triadó (Article 8) and Jacquelyn Veraldi (Articles 16, 20, 38, 40, 41, 42, 43, 44, part II on Impact Assessment). All parts were reviewed by other experts, the coordination team and Commission services. The coordination team consisted of Philip De Man, Gustavo Müller, Axel Marx and Heidi Suorsa.

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Contents

Glossary of key terms

Absolute rights	These are fundamental rights that cannot be limited under any circumstances. An example is the prohibition of torture or inhuman or degrading treatment or punishment (Article 4).
Assessing impacts on fundamental rights	Assessing impacts on fundamental rights is a structured process used to evaluate whether a policy, law, or action may affect people's rights as protected by the Charter of Fundamental Rights of the European Union. The aim is to identify potential risks to fundamental rights at an early stage of policy or legislative development, allowing those risks to be addressed proactively. This assessment supports informed decision-making by helping policymakers understand how proposed measures might influence rights such as privacy, equality, freedom of expression, and access to justice. By systematically examining these impacts in advance, authorities can ensure that new laws and policies comply with fundamental rights standards and avoid unintended restrictions or harm to individuals and communities. In the video course materials, the term *assessing impacts on fundamental rights* is sometimes used interchangeably with *fundamental rights impact assessments*; however, both refer to the same underlying process.
Autonomy of EU law	This concept refers to the idea that the legal system of the European Union is independent from both national legal systems and international law. It means that only the Court of Justice of the EU, can interpret EU law with final authority. This ensures that EU law is applied uniformly across all Member States.
Binding vs non-binding	A binding legal act or rule must be followed by those to whom it applies. A non-binding act, such as a recommendation, is not legally enforceable but may still be influential in shaping policies or decisions.
Charter of Fundamental Rights of the EU (the Charter)	Charter principles are provisions in the Charter of Fundamental Rights that guide the actions of the EU and the Member States when they are implementing EU law, but which do not create individual rights that can always be directly

	enforced in court. Unlike Charter rights, which individuals can usually rely on before a judge, principles mainly serve as objectives that must be taken into account when drafting, interpreting, and applying legislation and policies. They become legally relevant when they are given effect through EU or national laws. Examples of Charter principles include provisions related to social policy or environmental protection.
Charter principles	Charter principles are provisions in the Charter of Fundamental Rights that guide the actions of the EU and the Member States when they are implementing EU law, but which do not create individual rights that can always be directly enforced in court. Unlike Charter rights, which individuals can usually rely on before a judge, principles mainly serve as objectives that must be taken into account when drafting, interpreting, and applying legislation and policies. They become legally relevant when they are given effect through EU or national laws. Examples of Charter principles include provisions related to social policy or environmental protection.
Charter rights	Charter rights are the legally protected fundamental rights set out in the Charter of Fundamental Rights of the European Union. These rights can generally be relied on by individuals in legal proceedings when they are affected by actions taken under EU law. Charter rights are binding on EU institutions in all their actions and on Member States when they are implementing EU law. Courts across the EU must respect and apply these rights, and individuals can challenge laws or decisions that violate them.
Council of Europe	The Council of Europe is an international organisation that promotes human rights, democracy, and the rule of law across Europe. It is not an institution of the European Union. Founded in 1949, it now includes 46 Member States, including all EU countries. One of its most important achievements is the European Convention on Human Rights (ECHR), which is enforced by the European Court of Human Rights (ECtHR) in Strasbourg.
Council of the European Union (the Council)	The Council of the European Union, often called the Council of Ministers or simply the Council, is one of the main decision-making bodies of the European Union. It represents the governments of the EU

	Member States. Ministers from each Member State meet in the Council to adopt EU laws, coordinate policies, and approve the EU budget, depending on the topic being discussed (for example, agriculture, justice, or foreign affairs). The Council shares legislative and budgetary powers with the European Parliament. Together, they adopt most EU legislation based on proposals made by the European Commission.
Court of Justice of the European Union (CJEU)	The highest court in the EU legal system, located in Luxembourg. It ensures that EU law is interpreted and applied consistently across all Member States. It also rules on whether EU laws, including those related to fundamental rights, are being properly followed.
Decision	A legal act of the EU that is binding on those to whom it is addressed. This may be a particular Member State, company, or individual. Unlike regulations or directives, decisions are specific in scope.
Direct effect	Direct effect is a principle of EU law that allows individuals to rely on certain EU law provisions before national courts without the need for further national legislation. A provision has direct effect if it is clear, precise, and unconditional. Direct effect may be vertical (invoked against a state authority) or, in some cases, horizontal (invoked against another private party).
Directive	An EU legal act that sets out a goal that all Member States must achieve. However, each country can decide how to implement that goal through its own national laws. Member States must transpose directives into their legal systems.
European Commission	The European Commission is the executive body of the European Union. It is responsible for proposing new laws, implementing EU policies, enforcing EU law, and managing the EU budget. It acts in the interest of the EU, rather than representing individual Member States. The Commission is made up of one Commissioner from each EU Member State, including the President of the Commission, who leads the institution. Commissioners are assigned specific areas of responsibility, such as justice, environment, or digital policy.

European Convention on Human Rights (ECHR)	An international human rights treaty developed by the Council of Europe. Although the EU is not a party to the Convention, all EU Member States are. Many rights in the Charter reflect those in the ECHR, and the Charter must be interpreted in line with it where the rights overlap.
European Court of Human Rights (ECtHR)	A court based in Strasbourg that ensures compliance with the ECHR. Individuals can bring cases against states for violations of their rights under the ECHR.
European Parliament	The European Parliament is one of the main institutions of the European Union and plays a key role in the EU's law-making process. It is directly elected by EU citizens every five years, making it the only EU institution with members chosen by the public. The Parliament works together with the Council of the EU to adopt EU laws, based on proposals from the European Commission. It also approves the EU budget and monitors how EU funds are spent. The Parliament is made up of Members of the European Parliament (MEPs). These members represent citizens from all Member States and are grouped not only by country, but also by political affiliation.
EU Agency for Fundamental Rights (FRA)	The EU Agency for Fundamental Rights, often referred to as FRA, is an independent body of the European Union. It was set up to provide expert advice and support on fundamental rights to EU institutions and Member States. The Agency collects data, conducts research, and publishes reports on a wide range of issues related to fundamental rights. Its work helps policymakers understand how EU laws and policies affect people's rights in practice. Its headquarters are in Vienna, Austria.
EU Treaties	The EU is founded on two core treaties which are currently in force: the Treaty on European Union (TEU) and the Treaty on the Functioning of the European Union (TFEU). These set out the powers of the EU, the role of its institutions, and how laws are made. The Charter became legally binding through these treaties.
Explanations relating to the Charter of Fundamental Rights	These are official documents that accompany the Charter and help explain the meaning and origin of each Article. Although they are not binding, they

	are used by courts, including the Court of Justice of the EU, to interpret the Charter.
Horizontal effect	This term refers to the application of fundamental rights between private individuals or organisations (e.g., in employment or contractual disputes). Not all Charter rights can be enforced horizontally, but some case law supports their relevance in private legal relationships.
Judiciable/justiciable	If a right is judiciable, it means that it can be defended or enforced in a court of law. In other words, individuals can bring a legal case to protect or challenge a violation of that right.
Mainstreaming	Mainstreaming means making fundamental rights an integral part of all stages of policymaking and lawmaking. Rather than checking for impacts on rights at the end of the process, mainstreaming ensures that rights are considered from the start, when defining problems, setting goals, and developing solutions. The aim is to avoid harm, reduce risks, and design policies that actively respect and support rights. This approach helps make laws more inclusive, effective, and legally sound.
Policy option	A policy option is one of several possible ways to address a problem or achieve a goal in public policy. During the preparation of a new law or strategy, different policy options are explored and compared, for example, doing nothing, introducing a new law, changing existing rules, or using financial incentives. Each option may have different impacts on rights, the economy, or the environment. Analysing these impacts helps decision-makers choose the best approach.
Primacy of EU law	Primacy of EU law means that when there is a conflict between EU law and national law, EU law takes precedence. This principle ensures that EU rules are applied consistently across all Member States. For example, if a national law contradicts a regulation or directive, the national law must give way. This principle is essential for legal certainty and for protecting the rights granted under EU law, including those in the Charter.
Primary law	Primary law is the supreme source of law in the EU, setting out the competences of the EU, providing the framework in which its institutions operate, and pronouncing its fundamental rules

	and values. It includes the EU Treaties and the Charter.
Proportionality	A legal principle used to decide whether a limitation on a fundamental right is justified. It requires that any restriction is necessary, uses the least restrictive means possible, and is balanced in relation to the objective being pursued.
Recommendation	A non-binding legal act. It provides guidance or suggestions to Member States or institutions but does not have legal consequences. Recommendations can still influence lawmaking and help shape future policies.
Regulation	A type of secondary EU law that is directly applicable in all Member States as soon as it is adopted. This means it does not need to be implemented through national legislation because it automatically becomes law in every country.
Secondary legislation	Laws made by the EU institutions to implement the objectives of the Treaties. This includes regulations, directives, and decisions. These instruments put primary law into practical effect.
Stakeholder	Individuals or organisations affected by or interested in a policy, law, or decision. Stakeholders may include government agencies, civil society groups, businesses, communities, or citizens. Engaging stakeholders in policymaking helps ensure that fundamental rights are properly considered.
Subsidiarity	Subsidiarity is a principle of EU law that helps decide whether action should be taken at the EU level or by individual Member States. It means that the EU should only act when an objective cannot be achieved well enough by countries acting alone and would be better achieved by acting together at EU level. This principle is especially important in areas where the EU shares competence with the Member States, and it helps protect national decision-making.
Treaty on European Union (TEU)	The TEU is one of the two main treaties that form the constitutional basis of the European Union. It sets out the EU's values, goals, institutions, and some decision-making processes. It also defines key legal principles such as respect for fundamental rights, democracy, and the rule of law. The TEU introduced the Charter of Fundamental Rights as legally binding through the

	Lisbon Treaty, giving the Charter the same legal status as the EU Treaties.
Treaty on the Functioning of the European Union (TFEU)	The TFEU is the second main treaty of the EU. It details how the EU functions in practice, including rules about the internal market, competition, transport, environment, justice, and other areas of policy. It also sets out how laws are made, which competences the EU has, and how powers are divided between the EU and Member States. Together with the TEU, the TFEU defines the legal framework of the European Union.
Vertical effect	This refers to situations where fundamental rights are used to challenge actions by public authorities, such as national governments or EU institutions. Most applications of the Charter involve vertical effect, for example, when a person challenges a law that conflicts with their Charter rights.

Introduction

The protection and promotion of fundamental rights lie at the heart of the European Union. With the entry into force of the Treaty of Lisbon, the Charter of Fundamental Rights of the European Union acquired the same legal value as the EU Treaties. As a result, fundamental rights are not abstract principles, but binding standards that must inform the development, implementation, and enforcement of EU law.

In practice, this means that EU institutions, bodies, offices, and agencies must ensure that all of their actions comply with the Charter. Member States, by contrast, are bound by the Charter only when they are implementing Union law. In such situations, policymakers, legislators, legal practitioners, and public authorities at national, regional, or local level must ensure that their actions are consistent with the rights and principles set out in the Charter. Given the growing volume and complexity of EU legislation, national authorities are increasingly required to apply EU law in a wide range of policy areas. At the same time, fundamental rights considerations arise across many sectors of policymaking and administration. Ensuring compliance with the Charter in these contexts therefore requires both a solid legal understanding and practical tools that support policymakers and public authorities in integrating fundamental rights into their work.

The Massive Open Online Course (MOOC), *From Theory to Practice: Applying the Charter of Fundamental Rights of the EU*, and the present training manual have been developed to support this objective. Together, they aim to translate the Charter from a constitutional text into a practical instrument for daily decision-making. The course provides structured, accessible, and interactive learning modules. This manual complements that learning experience by offering deeper legal analysis, methodological guidance, and reference material that can be consulted independently in professional contexts.

This introduction sets out the objectives, scope, and structure of the present training manual, situating it within the broader framework of European Union (EU) fundamental rights law and practice.

Section A first clarifies the purpose of the manual and its relationship with the accompanying MOOC, outlining how the two resources are intended to be used together. It then covers the overall structure of the manual, distinguishing between the substantive part, which provides an Article-by-Article analysis of the Charter of Fundamental Rights of the European Union (the Charter), and the methodological part, which focuses on assessing the impact on fundamental rights.

Section B provides an overview of the Charter's legal status, scope of application, and structure. It explains how the Charter became legally binding with the entry into force of the Treaty of Lisbon, what this means for EU institutions and Member States, and under which conditions it applies at national level. The section also outlines the organisation of the Charter into its seven Titles and clarifies its relationship with the EU Treaties, national constitutional traditions, and the European Convention on Human Rights. Together, these elements provide the legal foundation necessary to understand how the Charter functions in practice and why it is central to EU law and policymaking.

Finally, section C explains the role of the general provisions of the Charter (Articles 51–54), which are addressed separately because of their cross-cutting significance for the application and interpretation of all Charter rights.

A. Purpose of the training manual and how to use it

This training manual has been developed to support the practical application of the Charter in law- and policymaking in the EU and its Member States. It is intended to function as a complementary resource to the online course '*From Theory to Practice: Applying the Charter of Fundamental Rights of the EU'* available on the EU Academy platform.

While the courses introduce the Charter through interactive learning modules featuring expert-led videos and real-life scenarios, this manual provides comprehensive reference materials for the various Charter provisions, as well as a deeper guide on how to apply the fundamental rights contained therein in law- and policymaking. It is comprised of two main sections: the first part explaining the provisions of the Charter with references to key case law, policy instruments and scholarly material; and the second part providing hands-on, practical guidance for officials on how to mainstream the Charter in their work.

Through clear explanations, carefully selected examples from practice, and key legal references, the manual helps users understand when and how the Charter applies, how to identify potential rights implications, and how to ensure compliance with fundamental rights from the earliest stages of the policymaking process. It also explains how fundamental rights considerations can be integrated across policy sectors, a process often referred to as the "mainstreaming" of fundamental rights.

The manual has been specifically designed to serve the needs of the target audience of the online course, which primarily consists of public administrators and policymakers at national, regional, and local level. This includes policy officers, legislative drafters and other officials involved in the preparation, implementation, and enforcement of EU law. In addition, the manual is relevant for legal practitioners and other professionals who work with or interpret EU law in their daily practice. Its purpose is to bridge the gap between theory and practice by demonstrating how the Charter can be actively applied in policymaking, legislative drafting, implementation, and enforcement processes.

To get the most out of the learning experience, it is strongly recommended that learners complement the online course with this training manual. Learners can use the manual to look up legal details, definitions or case references after completing a course module, or to consult the manual beforehand to gain a better understanding of the right or principle being covered. The manual is also particularly useful for those who wish to revisit material after completing a course unit or want to apply it directly in their professional context.

Conversely, readers of the manual are strongly encouraged to use the course modules to bring the legal content of this manual to life, through illustrative examples and applied exercises. Whether used as a reference during the course or as a stand-alone resource, **this manual is intended to empower professionals to make informed, Charter-compliant decisions**, improving not only the legal soundness of public measures but also their democratic legitimacy and societal impact.

In addition to introducing the Articles of the Charter, the manual provides practical tools and guidance on assessing the impact on fundamental rights, and a method of evaluating whether proposed policies, laws, or administrative measures respect the provisions of Charter. These tools align with the Better Regulation Toolbox of the European Commission, offering structured support to authorities working to improve the rights compliance and legitimacy of their initiatives.

As noted, this manual is divided into two main parts:

Part I: Article-by-Article overview of the Charter rights (Articles 1–50)

This section provides an overview of each fundamental right and principle enshrined in the Charter. Each Article is addressed in its own dedicated entry, which:

- summarises the main content and legal scope of the right or principle;
- explores interpretative guidance, including relevant jurisprudence from the Court of Justice of the European Union (CJEU) and, where appropriate, the European Court of Human Rights (ECtHR);

- connects each Charter Article to examples of its practical application in policy/legal development and implementation; and
- provides a list of relevant resources for further learning.

The entries in this first part mirror the thematic structure of the online course modules and serve as a quick yet comprehensive reference tool for those seeking to clarify definitions, understand the scope of specific rights, or access relevant legal sources.

Part II: Guide to assessing impact on fundamental rights

The second part of the manual shifts focus from legal content to applied methodology. It offers a practical guide to assessing impacts on fundamental rights, a key tool for integrating Charter compliance into law and policymaking. This section draws from the Better Regulation Toolbox of the European Commission, in particular Tool #29 on "Fundamental rights, including the promotion of equality". It aims to translate this theoretical framework into clear, actionable steps that national and EU-level authorities can follow.

Readers will find here:

- an explanation of what impact assessments that focus on fundamental rights are and how they work;
- step-by-step instructions for conducting impact assessments in the context of fundamental rights, from defining the problem to evaluating policy options through a fundamental rights-based lens;
- examples and insights drawn from actual EU-level assessments of impact on fundamental rights, highlighting good practices and common challenges; and
- a repository of additional references.

This second section of the manual is designed to help policymakers and legal professionals not only detect and avoid Charter infringements, but also to enhance the quality, effectiveness, and inclusiveness of the measures they develop.

B. Understanding the Charter of Fundamental Rights of the EU

The Charter of Fundamental Rights of the European Union brings together, in a single legally binding document, a comprehensive set of rights to which individuals in the European Union are entitled. These include civil, political, economic, cultural, and social rights, as well as newer rights relevant to contemporary issues, such as data protection.

Historical background and legal status

The Charter was proclaimed in 2000 by the European Parliament, the Council of the EU, and the European Commission, as a political declaration. At that time, it did not have binding legal force and therefore did not create enforceable rights. However, it served as an important interpretative and declaratory reference point for EU institutions, national authorities, and courts when considering fundamental rights in EU law and policymaking.This changed with the entry into force of the Treaty of Lisbon in December 2009, which gave the Charter the same legal value as the EU Treaties, as per Article 6 (1) of the Treaty on European Union (TEU). As a result, the Charter became a legally binding source of primary EU law, on the same footing as the TEU and the Treaty on the Functioning of the European Union (TFEU).

Since the entry into force of the Lisbon Treaty in 2009, the Charter must hence be respected and applied by all EU institutions, bodies, offices, and agencies in all of their actions. This means that whenever they propose legislation, adopt legal acts on the basis of the Treaties, formulate policies, or otherwise act within their competences, they must ensure that their actions comply with the rights and principles set out in the Charter.

The Charter does not provide an independent legal basis for legislation, nor does it expand the competences of the Union. Rather, it sets binding standards that must be observed when EU institutions act within the powers conferred upon them by the Treaties. Compliance with the Charter is a legal obligation and is subject to judicial review before the Court of Justice of the European Union (CJEU).

In addition to binding the EU institutions, the Charter also applies to Member States, but only when they are implementing Union law. This is reflected in Article 51(1) of the Charter, which clearly limits its scope. As such, the Charter does not apply to purely national measures that fall outside the scope of EU law. However, the CJEU has interpreted the notion of "implementing Union law" broadly, as will be discussed further below.

Structure and content of the Charter

The Charter is composed of a Preamble, followed by 54 Articles that are organised into seven titles:

Title I: Dignity – Covers fundamental rights such as the right to life, the right to human dignity, and the prohibition of torture and slavery.

Title II: Freedoms – Includes rights such as the right to liberty, respect for private and family life, freedom of thought and expression, and the right to education.

Title III: Equality – Establishes rights including equality before the law, non-discrimination, the rights of the child, and protection of cultural and linguistic diversity.

Title IV: Solidarity – Lays out rights mainly related to social and economic matters, including workers' rights, social protection, health care, and environmental protection.

Title V: Citizens' rights – Contains rights specific to EU citizenship, such as the right to vote in European and municipal elections, the right to good administration, and access to documents.

Title VI: Justice – Concerns rights to a fair trial, presumption of innocence, and effective remedies, among others.

Title VII: General provisions – Comprising Articles 51–54, explaining how the Charter should be applied and interpreted.

Each of the first fifty Charter Articles describes either a specific right or a principle, often divided into paragraphs that outline different dimensions of the right or specific conditions of application. In some cases, these Articles correspond directly to rights already guaranteed under the European Convention on Human Rights (ECHR) or derived from EU Treaty law or the constitutional traditions of Member States.

To aid with its interpretation, the Charter is accompanied by a set of official "Explanations", which describe the sources of each right and provide references to relevant legal instruments. While not legally binding themselves, these Explanations must be given "due regard" by both national and EU courts in the application or interpretation of the Charter.

In today's EU legal system, the Charter thus plays a central role in ensuring that laws, policies, and practices respect the rights and principles that are foundational to the Union. For anyone involved in policymaking, legislation, enforcement, or legal interpretation, understanding the Charter is essential.

C. General provisions (Articles 51-54 of the Charter)

The final four Articles of the Charter, namely Articles 51 to 54, are known as the general provisions. While the individual rights and principles recognised by the Charter are set out in Articles 1 to 50, Articles 51 to 54 are essential for understanding how all of these rights apply in practice. These general provisions are not dedicated to recognising specific fundamental rights; rather, they define the scope, interpretation, and limitations of the Charter, explain how it relates to other legal frameworks such as the ECHR and national constitutions, and include a safeguard against abuse. Any proper assessment of fundamental rights under the Charter, especially during legal drafting or policymaking, must take these general provisions into account. As such, they form the legal backbone of the application of the Charter provisions.

Because of their foundational importance, the accompanying online course "*From Theory to Practice: Applying the Charter of Fundamental Rights of the EU*" introduces the general provisions early on, through two mandatory modules at the beginning of the training path. These modules are designed to ensure that learners understand the scope, application, and limitations of the Charter, before moving on to individual rights. Grasping these provisions is essential for correctly interpreting all subsequent modules, as they underpin the legal logic of the Charter. For this reason, Articles 51 to 54 are addressed below in a dedicated section of the introduction to highlight their overarching function and unique character.

Article 51: Field of application

Article 51 answers the critical question: to whom does the Charter apply? Specifically, it provides in paragraph 1 that:

"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."

Hence, according to this Article, the Charter is binding on:

- All EU institutions, bodies, offices, and agencies in all their actions; and
- The Member States when they are implementing Union law.

This means that whenever an EU institution creates a new law, develops a policy, or takes any kind of decision that has legal consequences, it must follow the rights and principles set out in the Charter. There are no exceptions; respecting the Charter is a basic obligation for all EU bodies.

For Member States, the situation is more nuanced. The Charter does not apply to everything national authorities do. It only applies when they are acting within the framework of EU law.[1] For example, when a Member State is transposing an EU directive into national law, applying an EU regulation, or making an administrative decision based on EU law, it must respect the Charter. The CJEU has taken a broad view of when the Charter applies. As long as there is a sufficient connection to EU law, such as applying an EU regulation, transposing a directive, or making decisions under an EU funding programme, Member State authorities must ensure that their actions respect the rights and principles enshrined in the Charter. In other words, if national authorities are working in an area where EU law plays a role, they are considered to be acting under EU law and must follow the Charter.

Finally, Article 51 also makes clear in paragraph 2 that the Charter does not give the EU any new powers, by noting explicitly the following:

"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."

Thus, the Charter does not let the EU do things it could not already do under the Treaties. Instead, it sets out rules for how the EU and Member States must behave when they are using the powers they already have.

[1] See C-617/10 *Åkerberg Fransson, EU:C:2013:105, para. 21;* See also Case C-206/13 *Siragusa*, EU:C:2014:126.

Article 52: Scope and interpretation

Article 52 provides a detailed framework for how the Charter should be interpreted and when the rights it entails can be limited. It is central to applying the Charter in practice. It consists of seven paragraphs highlighting different aspects of the scope and interpretation of the rights and principles contained in the Charter.

Article 52(1): Limiting Charter rights

"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."

Not all Charter rights are absolute. The vast majority can be limited under strict conditions. However, Article 52(1) sets out a general rule: even for those rights that are not absolute, any limitation must be provided for by law, respect the essence of the right, and meet objectives of general interest recognised by the Union or the rights and freedoms of others. These limitations must also be proportionate.

This provision reflects the classic three-step proportionality test in EU law:[2]

1. Legality: The restriction must be provided for by a clear legal basis
2. Necessity: The measure must be necessary to achieve the legitimate aim
3. Proportionality in the strict sense: The measure must be the least intrusive option, and the impact on rights must not be excessive in relation to the objective

However, the first five Charter rights are absolute, meaning they cannot be limited under any circumstances, even when these limitations respect the conditions set out in Article 52(1). These are:

- Article 1: Human dignity
- Article 2: Right to life
- Article 3: Right to integrity of the person
- Article 4: Prohibition of torture and inhuman or degrading treatment or punishment
- Article 5: Prohibition of slavery and forced labour.

These rights cannot be derogated from or restricted, not even in times of crisis.

Article 52(2): Charter rights based on the Treaties

"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"

This paragraph clarifies that rights which are already provided for in the EU Treaties must be exercised under the conditions set out in those Treaties. For example, the right to petition can be found both in Article 44 of the Charter and in Article 227 of the TFEU. If the Treaties set limits or procedures for applying such rights, these also apply under the Charter.

Article 52(3): Relationship with the European Convention on Human Rights

"3. In so far as this Charter contains rights which correspond to rights guaranteed by the

[2] See for instance joined Cases C-293/12 and C-594/12, *Digital Rights Ireland and Seitlinger and Others*, ECLI:EU:C:2014:238, paras. 38-39, 46-69.

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"

This provision ensures consistency between the Charter and the ECHR, to which all Member States are parties. Where a Charter right corresponds to a right in the ECHR, it must be interpreted with the same meaning and scope as that Convention right. This ensures legal coherence and prevents conflicting standards. Although the European Union itself is not yet a party to the ECHR, accession remains a Treaty obligation under Article 6(2) of the TEU.

Guidance on which Charter rights correspond to ECHR rights can be found in the official Explanations to the Charter, which include references to the relevant ECHR provisions. However, the Charter may go further than the ECHR, offering more extensive protection. For example, the CJEU may interpret a Charter right in a more expansive way than the European Court of Human Rights.

Article 52(4): National constitutional traditions

"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"

Article 52(4) requires that certain Charter rights be interpreted in light of the constitutional traditions common to the Member States. This reflects a long-standing principle of EU law, now also expressed in Article 6(3) of the Treaty on European Union, according to which fundamental rights form part of the general principles of EU law as derived from the constitutional traditions common to the Member States.

In practice, this means that when a Charter right is rooted in shared constitutional principles across the Member States, its interpretation should remain consistent with those traditions. The aim is not to import the specific constitutional rules of one Member State into EU law, but rather to identify common elements that reflect a shared European legal heritage.

The CJEU has historically relied on constitutional traditions to shape the content of fundamental rights within the EU legal order.[3] Article 52(4) confirms that this interpretative method continues to apply under the Charter framework.

Article 52(5): Rights vs. Principles

"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"

One of the most complex parts of Article 52 is the distinction between rights and principles. To understand this distinction, keep in mind the following rule:

- Rights = directly enforceable by individuals in court.
- Principles = not justiciable in themselves, but they guide the interpretation of legislation and policy.[4]

The Court of Justice has clarified this distinction in its case law. In particular, the Court held that a Charter provision formulated as a principle cannot, by itself, be relied upon to disapply

[3] Case 11/70 *Internationale Handelsgesellschaft*, EU:C:1970:114.
[4] Explanations relating to the Charter, Art. 52(5); C-176/12 Association de médiation sociale (AMS), EU:C:2014:2, paras. 45-49.

conflicting national law. [5] Instead, principles may be invoked only in the interpretation of implementing measures or in reviewing their legality.

The Explanations to the Charter clarify that Charter Articles 25 (the right of the elderly), 26 (integration of persons with disabilities), and 37 (environmental protection) are examples of principles. Meanwhile, some rights, such as Articles 23 (equality between men and women), 33 (family and professional life), and 34 (social security and social assistance), contain elements of both a rights and a principle. This distinction is important for legal practitioners and policymakers alike: knowing whether a Charter provision is enforceable in a given context depends on whether it is classified as a right or a principle.

<u>Article 52(6) and (7): National laws and the Explanations</u>

"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"

These final two paragraphs of Article 52 of the Charter stress that national laws and practices must be taken into account when interpreting Charter provisions. Also, the official Explanations of the Charter, which were drafted when the Charter was adopted, must be given due regard. As noted, these Explanations are not legally binding but are highly influential in interpreting the meaning and scope of rights.

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 53 is also known as the "non-regression clause". It ensures that the Charter does not reduce or compromise the level of protection already guaranteed by:

- EU law;
- International law (including the ECHR); or
- Member Sates' constitutions.

This provision underscores that the Charter is not meant to replace or override existing human rights standards but aims to complement and reinforce them. In practice, this means that if a Member State's constitution or an international treaty offers more protective standards than the Charter, those can still apply. However, the primacy of EU law still holds when interpreting situations within the scope of Union law.

At first sight, this might suggest that Member States are always free to apply higher national standards of protection. However, the CJEU has clarified that Article 53 must be read in light of the principle of primacy of EU law.[6] Consequently, when EU law fully harmonises a matter, Member States may not rely on higher national constitutional standards if doing so would undermine the primacy, unity, or effectiveness of EU law. Article 53 therefore does not create an unlimited right for Member States to depart from EU standards. Instead, it ensures that the Charter operates as a floor of protection within the EU legal order, while preserving the structural principles of EU law. In practice, this means that higher national standards may apply only insofar as they do not compromise the uniform application of EU law.

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[5] C-176/12 Association de médiation sociale (AMS), EU:C:2014:2, paras. 45-49.
[6] C-399/11 *Melloni*, EU:C:2013:107, paras 58–63.

Article 54: 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"

Article 54 serves as a safeguard against misuse. It states that nothing in the Charter may be interpreted as conferring a right to engage in any activity aimed at undermining other rights. This echoes Article 17 of the ECHR and serves to balance freedom with responsibility. For example, one cannot invoke freedom of expression (Article 11 of the Charter) to justify hate speech that incites violence or undermines other fundamental rights such as dignity or non-discrimination.

Closing remarks: How to read the Charter

In practical terms, the above means that anyone working on laws, policies, or administrative measures within the scope of EU law must begin by asking a number of concrete questions: does the Charter apply in this situation, which rights or principles may be affected, can a limitation be justified under Article 52, and are there relevant standards in the ECHR, the Treaties, or national constitutional traditions that must also be taken into account? The general provisions provide the tools for answering these questions and for avoiding mistakes in the application of the Charter. Against that background, the next part of the manual turns to the individual Charter provisions one by one, so that readers can identify the content, scope, and practical implications of each right and principle when preparing, interpreting, or reviewing measures under EU law.

I

Part I:
Article-by-Article overview of the Charter rights

(Articles 1-50)

Part I: Article-by-Article overview of the Charter rights (Articles 1-50)

DIGNITY

Article 1 - Human dignity

Human dignity is inviolable. It must be respected and protected.

Description

The inspiration behind Article 1 of the Charter of Fundamental Rights of the EU were the constitutional provisions of several Member States which protect human dignity, as well as UN human rights documents such as the Universal Declaration of Human Rights. Although the European Court of Human Rights often relies on the concept of dignity, the European Convention does not mention it explicitly. Article 1 should be read with Article 2 Treaty on European Union (TEU), listing dignity as a founding Union value, and the Charter's Preamble, which calls it a "universal value" and part of the Union's "spiritual and moral heritage." Referring to dignity as "inviolable" affirms the special moral and legal status of individuals.

Dignity is an elusive concept, and the Charter does not define it. However, the Explanation on Article 1 states that "the dignity of the human person is not only a fundamental right in itself but constitutes the real basis of fundamental rights". Thus, dignity is assigned a dual role: it is an autonomous right but also the value on which all other rights are based.

Article 1 is part of Title I of the Charter, "Dignity". It includes the right to life, integrity of the person, and bans torture, slavery and forced labour. Dignity also appears in Articles 25 and 31 on elderly rights and fair working conditions. As the foundation of all rights, it informs interpretation of every Charter Article and serves as a tool to clarify other rights.

EU institutions and Member States have two obligations under EU law: to respect and to protect human dignity. Respect is a negative duty, prohibiting actions incompatible with dignity. Protection is a positive duty to prevent violations and consider dignity in policy-making, possibly extending to private-party breaches.

Case Law

The Court of Justice of the EU has not yet explored what free-standing rights may arise from Article 1, preferring to combine references to it with other Charter or Treaty Articles. The most prominent use of dignity has been in cases concerning the EU's asylum procedures and Article 4 of the Charter on the prohibition of torture and inhuman or degrading treatment.

In CK (C-578/16 PPU), the connection between Article 1 and Article 4 was made explicit. The Court relied on Article 1 to hold that the prohibition of inhuman or degrading treatment in Article 4 of the Charter is "absolute" because it is "closely linked to respect for human dignity".

In Jawo (C-163/17) and Ibrahim (C-297/17) the Court affirmed this approach. It ruled that it is a violation of Article 4 to expose an applicant for asylum to conditions of extreme material poverty at any point during the application procedure. The effect of those judgments is that the presumption that all Member States treat applicants for asylum in a manner consistent with the Charter can be rebutted if there is evidence to the contrary.

In Aranyosi *(*C-404/15 and C-659/15 PPU) the Court dealt with another presumption: that in the context of the European arrest warrant system, each Member State can consider that all other Member States respect the fundamental rights of persons held in detention. Combining Articles 1 and 4 of the Charter, the Court concluded that where there is evidence that the detention conditions in the Member State issuing the warrant amount to inhuman or degrading treatment, the executing judicial authority must consider whether the surrender procedure should be brough to an end.

The Court has also referred to Article 1 in combination with Article 7 of the Charter on private and family life.

A and others (C-148-150/13) was about the assessment of applications for refugee status based on sexual orientation. The Court ruled that while Member States can assess the statements and evidence of applicants that they were homosexuals, it would be a breach of Articles 1 and 7 of the Charter to use intrusive methods requiring an examination of intimate aspects of the applicants' sexual life.

In Mirin (C-4/23), the Court interpreted Articles 20 and 21(1) of the Treaty on the Functioning of the EU (TFEU) in light of Articles 1 and 7 of the Charter to hold that when an EU citizen who has exercised their free movement rights, has changed their gender identity according to the law of the Member State of destination, the Member State of origin cannot refuse to register the change in the birth certificate and request them to initiate new legal proceedings for a change of gender identity.

Dignity can also function as a limit on the exercise of the fundamental economic freedoms in the internal market.

In Omega (C-36/02) the Court ruled that a Member State may prohibit the playing of a laser game which involved simulated killings of humans on public policy grounds because this activity is an affront to human dignity.

In Brüstle v Greenpeace (C-34/10) the Court interpreted Directive (EU) 98/44 on the legal protection of biotechnological inventions and held that a scientific process involving human embryonic stem cells which required the destruction of human embryos could not be protected by a patent because this would be incompatible with human dignity.

Mainstreaming

In addition to Article 2 TEU, which refers to human dignity as a foundational value of the EU, Article 21 TEU mentions "respect for human dignity" as a principle which should guide the external action of the Union. Similarly, Article 49 TEU makes respect for Article 2 values a condition for accession to the EU. Therefore, human dignity becomes relevant not only for the internal life of the EU but also for the ways in which it relates to non-member countries and the EU's external action. The EU Action Plan on Human Rights and Democracy 2020-2024 reaffirmed the Union's commitment to advancing human dignity in internal and external policies.

Human dignity is referred to frequently in secondary legislation.

The Asylum Procedures Directive (Directive 2013/32/EU), the Qualification Directive (Directive 2011/95/EU), the Reception Conditions Directive (Directive 2013/33/EU), the Returns Directive (Directive 2008/115/EC) and the Dublin III Regulation (Regulation (EU) 604/2013) are laws which regulate migration to the EU and the procedures for granting asylum. They provide that individuals should be treated in a manner which ensures full respect for their human dignity.

Also, human dignity is mentioned in legislation which regulates activities that are closely linked to the human person.

Directive 2010/45/EU on the safety of human organs intended for transplantation requires Member States to ensure that all donations of organs are voluntary and carried out on a non-profit basis.

Regulation (EU) 536/2014 on clinical trials of medicinal products for human use provides that a clinical trial may be conducted only if the dignity, safety, well-being, and rights of the persons participating in the trial are respected, and that those considerations prevail over any other interests. An aspect of this rule is that participants must have given their free and voluntary consent.

Further, the EU has adopted legislation to combat practices which are a violation of human dignity. Those laws give effect to the positive obligation of the Union to take action to protect dignity.

Regulation (EU) 2024/3015 on the prohibition of products made with forced labour makes it unlawful for economic operators to place on the market products made with forced labour and establishes a Union Network Against Forced Labour Products to serve as a platform for cooperation of national authorities.

Directive (EU) 2024/1712 amending Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims is a law which establishes criminal offences and penalties in the area of trafficking of human beings. It requires Member States to investigate and prosecute instances of trafficking and provide assistance and support to victims. The revised Directive introduces stricter criminalisation and provides stronger tools for public authorities to investigate and prosecute new forms of exploitation, including those that take place online, and ensure better assistance and support to victims.

Directive 2011/93/EU on combating the sexual abuse of children and child pornography established minimum rules on the definition of criminal offences and sanctions in relation to the sexual abuse and exploitation of children, child pornography and solicitation of children. Member States are required to take the necessary measures to facilitate and encourage the reporting to the relevant authorities of information or reasonable suspicions that a child may be the victim of the offences covered by the Directive and provide assistance. Additionally, it provides for an obligation to provide support to children victims of these offences, taking into account the best interests of the child. The Commission submitted a proposal to revise the Directive, following an ex-post evaluation highlighting the limitations of the instrument in addressing societal and technological changes since its entry into force.

Directive (EU) 2024/1385 on combating violence against women and domestic violence lays down common rules for the definition of criminal offences and the rights of the victims of domestic violence.

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Article 2 – Right to life

1. Everyone has the right to life.

2. No one shall be condemned to the death penalty, or executed.

Description

Article 2 of the Charter of Fundamental Rights of the EU enshrines the right to life, and the prohibition against the death penalty. The right to life requires Member States not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction. This includes a duty to protect people against the risk of harm from the activities of public authorities. It also includes a duty to protect people against threats to their lives, and a duty to provide arrangements to secure legal accountability for those responsible for a death. A breach of any of these duties could constitute a violation of the right to life.

The right to life in the Charter is based on Article 2 of the European Convention on Human Rights (ECHR) and has the same meaning and the same scope, in accordance with Article 52(3) of the Charter. This means that interpretation of the right to life by the European Court of Human Rights guides the meaning of the right to life under the Charter. For instance, the European Court of Human Rights has found that the right to life carries an obligation to take positive steps to investigate *breaches* of the right to life. This investigation must be effective, independent, prompt and transparent. This would also apply to interpretation of Article 2 of the Charter.

The right to life is of fundamental importance. It cannot be limited or derogated except in respect of deaths resulting from lawful acts of war. Outside of armed conflict, there are also some exceptional circumstances in which the deprivation of life through use of force will *not* be a violation of the right. These are: in defence of any person from unlawful violence; to effect a lawful arrest or to prevent the escape of a person lawfully detained; and in action lawfully taken for the purpose of quelling a riot or insurrection.

It follows that Article 2 may be applied in combination with Article 19(2) of the Charter, which prohibits the removal, expulsion, or extradition to a state where there is a serious risk of being subjected to the death penalty.

Article 2 allows a degree of appreciation to national authorities to decide the temporal scope of the right to life. It is up to the Member State to decide whether it begins at conception or at birth. The European Court of Human Rights has clarified that the right to life does not entail a 'right to die'.

Case Law

The Court of Justice of the European Union has considered Article 2 in a number of cases, including:
Joined Cases N.S. v Secretary of State for the Home Department, M.E. and Others v Refugee applications Commissioner, and Others (C-411/10 and C-493/10) concerned the transfer of an asylum seeker to the Member State responsible for processing the asylum application. The Court held that the presumption that this Member State complies with the prohibition of inhuman or degrading treatment is a rebuttable presumption i.e. if the applicant demonstrates that the receiving Member State does not comply with fundamental rights protection the transfer should not be allowed.

The European Court of Human Rights has made a number of important rulings in this area, which inform the interpretation of Article 2 of the Charter, including:

In McCann and Others v United Kingdom (18984/91), the Court held that Article 2 of the ECHR is one of the most fundamental provisions of the European Convention on Human Rights. It safeguards the right to life, without which enjoyment of any of the other rights and freedoms in the Convention is rendered nugatory. It sets out the limited circumstances when deprivation of life may be justified, and the Court has applied a strict scrutiny when those exceptions have been relied on by the respondent States.

In Centre for Legal Resources on behalf of Valentin Câmpeanu v Romania (47848/08), Article 2 of the ECHR right to life enjoins the State not only to refrain from the intentional and unlawful taking of life but also to take appropriate steps to safeguard the lives of those within its jurisdiction.

Erdal Muhammet Arslan and Others v. Türkiye (42749/19): While States have no control over natural events such as earthquakes, it is nonetheless the responsibility of States to ensure the prevention of foreseeable natural risks and to adopt measures aimed at reducing their effects in order to minimise their catastrophic dimension.

Nencheva and Others v. Bulgaria (48609/06): the positive obligation under Article 2 of the ECHR to take appropriate steps to safeguard the lives of those within its jurisdiction applies to medical care and assistance given to vulnerable persons institutionalised in state facilities.

Safi and Others v. Greece (5418/15): the positive obligation under Article 2 of the ECHR to take appropriate steps to safeguard the lives of those within its jurisdiction applies to migrants in sea operations.

Pretty v United Kingdom (2346/02): Article 2 of the ECHR cannot be interpreted as conferring a right to die; nor can it create a right to self-determination in the sense of conferring on an individual the entitlement to choose death rather than life.

Alkhatib and Others v Greece (3566/16): a member of the applicants' family, who was travelling in a boat with other migrants with a view to illegally entering Greece, sustained a serious gunshot wound as a result of shots fired by the coast guard. The Court found that the respondent State had failed to put in place an adequate legal and administrative framework governing the use of potentially lethal force in maritime surveillance operations, given the uncertainty of the applicable legal framework in such circumstances.

Cannavacciuolo and Others v Italy (39742/14, 51567/14, 74208/14 et al.): on the basis of positive obligations arising from Article 2 of the ECHR that the failure to diligently deal with systematic, decade-long, widespread and large-scale pollution phenomenon in the Campania region, and to take all steps required to protect the applicants' lives was a violation of the right to life.

Mainstreaming

Regulation (EU) 2019/1896 on the European Border and Coast Guard establishes the European Border and Coast Guard – also called Frontex. The regulation aims to "address migratory challenges and potential future threats at the borders, combat serious international crime, and ensure internal EU security while fully respecting fundamental rights and safeguarding free movement." The recitals of the Regulation provide that the institution respects the right to life, as well as a number of other relevant rights including the prohibition of torture and inhuman or degrading treatment or punishment. Article 80 of the Regulation also expressly guarantees the protection of fundamental rights, including the obligation to protect life where it is threatened on account of his or her race, religion, nationality, sexual orientation, membership of a particular social group or political opinion, or from which there is a risk of expulsion, removal, extradition or return to another country in contravention of the principle of non-refoulement.

Regulation (EU) 2019/125 concerning trade in certain goods which could be used for capital punishment, torture or other cruel, inhuman or degrading treatment or punishment prohibits trade in goods which could be *used* for capital punishment, as well as goods which could be used for the purpose of torture and other cruel, inhuman or degrading treatment or punishment. The Regulation explicitly references Article 2 paragraph 2 of the Charter, "no one shall be condemned to the death penalty or executed", in its opening recitals. The Regulation is considered furthering this aim of abolishing the death penalty by prohibiting the export, import, and transit of goods which have no practical use other than for these purposes. It also prohibits the technical assistance, training, advertising or brokering of these goods within the EU, even if the goods, themselves, are located beyond it.

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Protocol No. 6 to the Convention for the Protection of Human Rights and Fundamental Freedoms concerning the abolition of the death penalty

Protocol No. 13 to the Convention for the Protection of Human Rights and Fundamental Freedoms, concerning the abolition of the death penalty in all circumstances

Article 6, International Covenant on Civil and Political Rights

Parliamentary Assembly of the Council of Europe (PACE) Resolution 2229 (2018) on International obligations of Council of Europe member States to protect life at sea

UN Human Rights Committee General Comment No. 36 (2018) on article 6 of the International Covenant on Civil and Political Rights, on the right to life

Article 3 – Right to 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 of making the human body and its parts as such a source of financial gain;

(d) the prohibition of the reproductive cloning of human beings.

Description

The right to integrity of the person is rooted in what it means to be a person. It is linked to the idea of human dignity and that each person's physical and mental space ought to be protected.

The first paragraph of the provision acknowledges that every natural person can claim the right to integrity of the person. The notion of physical integrity relates to the right to be free from interferences with one's body. This may cover, for instance, the right to be protected from unwanted forms of medical treatment, as well as the freedom from psychological pressure and from the imposition of mental suffering. Provisions on the prohibition of torture and inhuman or degrading treatment or punishment are found separately in Article 4 of the Charter. It is important to note that the right in Article 3 paragraph 1 is not absolute, it may be balanced with other rights and legitimate interests such as public health where this is justified, proportionate and lawful.

The second paragraph of Article 3 provides specific guarantees applicable in the fields of medicine and biology, including the need for free and informed consent and prohibitions of eugenic practises, of the commercialisation of the human body through the sale of body parts, and of human reproductive cloning. The requirements in paragraph 2(b) through (d) are specific to certain situations and, as prohibited actions, their scope of application cannot be limited.

The prohibition of human reproductive cloning bans the creation of a human being by replacing the nucleus of an egg by the genetic material of another person's cells, resulting in the created person being identical to the one who provided the genetic material. As per the Explanations to the Charter, the prohibition does not extend to other forms of cloning, so that therapeutic cloning (to create cells, tissue, or organs) remains possible.

The right to the integrity of the person is not an explicit right within the European Convention on Human Rights, but similar protections on physical and mental integrity as well as the requirements for free and informed consent in medical treatment, have traditionally been recognised by the right to private life (Article 8 ECHR) and prohibition of torture (Article 3 ECHR).

As regards persons with disabilities, the United Nations Convention on Rights of Persons with Disabilities supplements Article 3(2)(a) of the Charter on free and informed consent. Article 25(1)(d) of the Convention on the Rights of Persons with Disabilities (UNCRPD) requires states parties to require health professionals to provide health care on the basis of free and informed consent. Persons with disabilities often face significant barriers in relation to the lack of their informed consent for medical treatment due to legal frameworks that allow for involuntary treatment, particularly for those with psychosocial and/or cognitive disabilities.

Case Law

The Court of Justice of the EU has considered Article 3 in a number of cases, including:

In Netherlands v European Parliament and Council (C-377/98) concerning the legal protection of biotechnological inventions, human dignity, and integrity, the Court of Justice confirmed that a fundamental right to human integrity is a general principle of Union law.

In Oliver Brüstle v Greenpeace (C-34/10), the Court ruled that human embryos cannot be used for industrial or commercial purposes, drawing from the right to human dignity and integrity under Article 3.

International Stem Cell Corporation v Comptroller General of Patents (C-364/13): Related to unfertilised human ova (egg) whose development was stimulated by parthenogenesis, the Court refined its earlier position (*Brüstle*), narrowing what qualifies as a "human embryo," but still based the reasoning in part on the protection of the integrity of the person.

The European Court of Human Rights has made a number of important rulings in this area, which inform the interpretation of Article 3 of the Charter, including:

YF v Turkey (24209/94): the Court of Human Rights found that the forced gynecological exam of a woman to prove she had not been assaulted while in police custody had violated her physical integrity as she had not consented to the exam, and thus was a violation of Article 8 ECHR.

Jalloh v Germany (54810/00): The European Court of Human Rights held that forcing a person to ingest a medication to make them vomit because they are suspected of having swallowed illegal drugs causes mental suffering and constitutes a violation of the right to mental integrity. The forcible administration of emetics, including restraining the applicant, inserting a tube, and keeping him under observation while awaiting the effects and forcing him to regurgitate, was liable to arouse feelings of fear, anguish and inferiority, capable of humiliating and debasing him and causing mental suffering.

VC v Slovakia (18968/07): The Court held that consent for the sterilisation of a Roma woman who was already in labour and about to be subjected to a Caesarean section was not free and informed and so constituted a violation of Article 3 ECHR by "grossly interfering with the applicant's physical integrity, depriving her of her reproductive capability," and also Article 8 ECHR by failing to provide legal safeguards through requiring the woman's consent.

GM and Others v Moldova (44394/15): a positive obligation arising from Article 3 ECHR, that the state had failed to establish and apply effectively a system providing protection to intellectually disabled women in psychiatric institutions from forced abortions was a breach of their physical integrity. The Court found that the domestic legal framework had lacked adequate safeguards of obtaining valid, free and proper consent from intellectually disabled persons for medical interventions.

Mainstreaming

Regulation (EU) 2024/1938 on standards of quality and safety for substances of human origin places duties on entities dealing with substances of human origin, stating they must respect and safeguard the rights of donors' physical integrity, as well as mental integrity for living donors. In line with the prohibition of the commercialisation of the human body – i.e. the sale of body parts, or the trade of body parts for financial gain – under Article 3, the regulation states that entities dealing with substances of human origin cannot "not provide financial incentives or inducements to donors or any persons granting consent on their behalf."

Guidelines on access to healthcare for persons with disabilities are being developed under the EU4Health programme. They will recommend the adoption of national legislation to guarantee the right of persons with disabilities to legal capacity and informed consent in healthcare, pursuant to Article 3(2)(a) of the Charter and Article 25 UNCRPD. This legislation should prohibit involuntary treatment and substituted decision-making and instead promote supported decision-making frameworks. The guidelines recommend also the development and implementation of training for different stakeholders.

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UN Convention on the Rights of Persons with Disabilities (CRPD)

CoE Convention on Human Rights and Biomedicine

Article 4 – Prohibition of torture and inhuman or degrading treatment

No one shall be subjected to torture or to inhuman or degrading treatment or punishment.

Description

Article 4 has the same meaning as Article 3 of the European Convention on Human Rights (ECHR). According to the European Court of Human Rights, "torture" covers situations where the deliberate severe mental or physical pain causing very serious and cruel suffering is inflicted for the pursuit of a specific purpose, such as gaining information, punishment, or intimidation.

Member States not only must refrain from inflicting torture or inhuman or degrading treatment or punishment, but also have positive obligations: States must first put in place a legislative and regulatory framework of protection. Second, states have, in certain defined circumstances (for example, those in detention at risk of harm from other inmates), an obligation to take operational measures to protect specific individuals against a risk of treatment contrary to that provision. This positive obligation is to be interpreted in such a way as not to impose an excessive burden on the authorities. The third positive obligation is that states have an obligation to carry out an investigation into claims of infliction of treatment contrary to the Article.

To determine whether the committed acts amount to torture, the intensity, intent, and nature of the act are looked at, as these factors distinguish torture from other less severe forms of ill treatment. The crucial distinction between torture and inhuman treatment lies in the degree of suffering caused by bodily injuries or intense physical or mental suffering.

The European Court of Human Rights has deemed treatment to be "degrading" because it was such as to arouse in the victims' feelings of fear, anguish and inferiority capable of humiliating and debasing them. It has considered treatment to be "inhuman" because, *inter alia*, it was premeditated, was applied for hours at a stretch and caused either actual bodily injury or intense physical or mental suffering.

Inhuman treatment, unlike torture, does not need to be intended to cause suffering. The distinguishing feature of degrading treatment, in contrast with torture and inhuman treatment, is the debasement and humiliation of the victim rather than physical or mental harm. There is also a distinction between treatment and punishment: whilst most prohibited acts would be classified as treatment, in certain circumstances these prohibited acts are clearly a form of punishment, e.g. prison sentences, which by nature involve humiliation and deprivation of liberty, hence be subject to a different scrutiny.

In order for a punishment or treatment associated with it to be "inhuman" or "degrading", the suffering or humiliation involved must in any event go beyond that inevitable element of suffering or humiliation connected with a given form of legitimate treatment or punishment.

Article 4 of the EU Charter of Fundamental Rights is an absolute right. Restrictions on the exercise of the right are not permitted. Inflicting torture or inhuman or degrading treatment therefore may not be justified by the need to realise a legitimate purpose, and no derogation is allowed from the right even at times of emergency. The prohibition applies irrespective of the circumstances of the act and of the victim's behaviour.

Case Law

The Court of Justice of the EU has considered Article 4 in a number of cases, including:

N. S. (C-411/10) v Secretary of State for the Home Department and M. E. and Others (C-493/10) v Refugee Applications Commissioner and Minister for Justice, Equality and Law Reform: Transfers under the Dublin Regulation are prohibited if systemic deficiencies in the receiving state's asylum system would expose applicants to inhuman or degrading treatment.

Pál Aranyosi and Robert Căldăraru v Generalstaatsanwaltschaft Bremen (Joined Cases C-404/15 and C-659/15): Extradition under the European Arrest Warrant can be suspended if there is a real risk of inhuman or degrading treatment in the issuing Member State's prisons.

Dumitru-Tudor Dorobantu v Generalstaatsanwaltschaft Hamburg (Case C-128/18): Courts must assess detention conditions in the requesting Member State before extradition under the EAW to avoid Article 4 Charter violations.

X and X v État belge (C-638/16 PPU): Member States are not obliged to issue humanitarian visas under EU law unless national legislation incorporates such a duty; EU Charter rights do not create such obligation alone.

Bashar Ibrahim and Others v Bundesrepublik Deutschland and Bundesrepublik Deutschland v Taus Magamadov (Joined Cases C-297/17, C-318/17, C-319/17, C-438/17): Refugees cannot be transferred under the Dublin system to Member States where systemic flaws in reception conditions exist, risking treatment contrary to Article 4 of the Charter.

The European Court of Human Rights has made a number of important rulings in this area, which inform the interpretation of Article 4 of the Charter, including:

A and Others v the United Kingdom (3455/05): Indefinite detention without charge of foreign nationals suspected of terrorism was found to violate Article 5 ECHR, the right to liberty and security of the person, as the Court held that national security concerns did not justify discriminatory treatment between foreign and domestic nationals. However, the treatment did not violate Article 3 ECHR prohibiting torture and inhuman or degrading treatment, as it did not reach the minimum level of severity required to fall within the scope of that provision. The Court held that, while the uncertainty and fear of indefinite detention must have caused them anxiety and distress and had probably affected the mental health of some of them, the applicants had not been without any prospect or hope of release, thereby not attaining the threshold of severity required under Article 3 of the Convention.

Ramirez Sanchez v France (59450/00): Prolonged solitary confinement did not amount to inhuman or degrading treatment under Article 3 ECHR, as it was based on security concerns, his isolation was 'relative', and the authorities were willing to return him to the ordinary regime.

X and Others v Bulgaria (22457/16): Failure to conduct an effective investigation into child sexual abuse in an orphanage, to put appropriate legislative and regulatory framework in place, breached procedural obligations under Article 3 ECHR. For a positive obligation to take operational preventative measures to arise, it must be established that the authorities knew or ought to have known at the time of the existence of a real and immediate risk of ill-treatment of an identified individual from the criminal acts of a third party and that they failed to take measures within the scope of their powers which, judged reasonably, might have been expected to avoid that risk.

Muršić v Croatia (7334/13): Detention conditions with limited personal space may violate Article 3 ECHR unless compensated by factors like freedom of movement and sufficient out-of-cell time. The conditions of the applicant's detention, though not always adequate, had not reached the threshold of severity required to characterise the treatment as inhuman or degrading.

Selmouni v France (25803/94): Ill-treatment of a detainee in police custody amounted to torture; as "any act by which severe pain or suffering, whether physical or mental, is intentionally inflicted on a person for such purposes as obtaining from him or a third person information or a confession". The threshold for torture can evolve with increasing human rights standards as it requires, according to the Court, greater firmness in assessing breaches of the fundamental values of democratic societies.

Bouyid v Belgium (23380/09): Any physical assault by law enforcement against an individual in custody, however minor, may constitute degrading treatment under Article 3 ECHR.

Price v the United Kingdom (33394/96): Detaining a severely disabled person in inadequate conditions was a violation of Article 3 ECHR due to lack of appropriate accommodation for her needs.

N.H. and Others v France (28820/13): Failure to provide material reception conditions for asylum seekers, including access to shelter, amounted to degrading treatment under Article 3 ECHR.

Khan v France (28820/13, 75547/13 and 13114/15): France violated Article 3 ECHR by leaving an unaccompanied minor asylum seeker homeless, without basic necessities or protection.

Mainstreaming

Directive 2011/95/EU establishes standards for the qualification of third-country nationals or stateless persons as beneficiaries of international protection. Recital 16 of the Directive emphasizes that the directive must be interpreted consistently with the rights recognized by the Charter, including its Article 4.

Directive 2013/32/EU outlines common procedures for granting and withdrawing international protection. Article 38 of the directive stipulates that the concept of a "safe third country" can only be applied if the country in question respects the prohibition of removal in violation of the right to freedom from torture and cruel, inhuman, or degrading treatment, as established in international law.

Directive 2013/33/EU sets standards for the reception of applicants for international protection. The directive mandates that Member States ensure victims of torture, rape, or other serious acts of violence receive necessary treatment, particularly access to appropriate medical and psychological care. It also requires that personnel working with such victims receive appropriate training concerning their needs and shall be bound by the confidentiality rules provided for in national law, in relation to any information they obtain in the course of their work.

The Anti-Torture Regulation (EU) 2019/125 prohibits exports and imports of goods which have no practical use other than for the purpose of capital punishment or torture and other cruel, inhuman or degrading treatment or punishment. It also prohibits certain related services, such as technical assistance, brokering or advertising. It also regulates goods that could be used for such purposes but that may also have other legitimate uses. In addition, it regulates the trade in chemicals and pharmaceuticals that could be used for capital punishment.

Directive (EU) 2024/1385: This Directive aims to combat violence against women and domestic violence. The directive underscores that violence against women and domestic violence violate several fundamental rights enshrined in the Charter, including the Article 4 prohibition of torture and inhuman or degrading treatment or punishment. The directive mandates that Member States criminalize specific forms of violence, including female genital mutilation, forced marriage, and various forms of cyber violence. It also sets out measures for victim protection, support services, and access to justice.

Reference Materials

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Daniel Bedford, “Key cases on human dignity under Article 3 of the ECHR” (2019) 2 EHRLR 185

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.

Description

Article 5 provides that no one shall be held in slavery or servitude or required to perform forced or compulsory labour. It also prohibits trafficking in human beings. The first and second paragraphs of Article 5 of the Charter of Fundamental Rights of the European Union (the Charter) correspond to the first and second paragraphs of Article 4 of the European Convention on Human Rights (ECHR). These paragraphs have the same meaning and scope as the ECHR Article, by virtue of Article 52(3) of the Charter. Article 5 applies to everyone, regardless of their citizenship.

Slavery involves control over a person that is akin to ownership. Forced or compulsory labour is work performed under constraints which limit the autonomy of a person but falls short of servitude or slavery. The term "forced or compulsory labour" must be understood in the light of the "negative" definitions contained in Article 4(3) ECHR, even though Article 5 of the Charter does not include these negative definitions. These are examples of obligatory service to the state which are excluded from the scope of "forced or compulsory labour". They are:

"(a) any work required to be done in the ordinary course of detention imposed according to the provisions of Article 5 of this Convention or during conditional release from such detention;

(b) any service of a military character or, in case of conscientious objectors in countries where they are recognised, service exacted instead of compulsory military service;

(c) any service exacted in case of an emergency or calamity threatening the life or well-being of the community;

(d) any work or service which forms part of normal civic obligations."

Servitude is an aggravated and permanent form of forced labour, entailing coercion and denial of freedom. The prohibition of slavery and servitude is absolute. This means that it cannot be limited, nor can it be suspended or derogated from, even during a public emergency.

According to Article 2 of Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims, trafficking in human beings is the recruitment, transportation, transfer, harbouring or reception of people, including the exchange or transfer of control over those persons, by means of the threat or use of force or other forms of coercion, of abduction, of, fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. Sexual exploitation can often be a common outcome of trafficking in human beings. Other forms of exploitation can include forced labour or services, including begging, slavery or practices similar to slavery, servitude, or the exploitation of criminal activities, or the removal of organs. The revised Anti-Trafficking Directive 2024/1712 adds new forms of exploitation that can qualify as trafficking in human beings, including the exploitation of surrogacy, of illegal adoption and of forced marriage.

Much of the EU’s role within the scope of 5 of the Charter relate to the prohibition of trafficking in human beings, as well as the prohibition of forced labour through the prohibition of products placed on the EU market which were made by forced labour.

Article 79 of the Treaty on the Functioning of the European Union (TFEU) gives the Union the competence to develop a common immigration policy aimed at ensuring, among other goals, “the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings”. The provision allows the Union to adopt measures to combat trafficking in human beings, in particular women and children. Article 83 TFEU entails the power to establish minimum rules concerning the definition of criminal offences and sanctions regarding trafficking.

Article 5 of the Charter is closely linked with other Articles of the Charter, including Article 3 on the integrity of the person, and the prohibition of torture and inhuman or degrading treatment under Article 4. Slavery, servitude, forced labour and trafficking also touch on various “freedoms” in Chapter II of the Charter, including Article 6 protecting the liberty and security of person, as well as the right to engage in work, freedom to choose an occupation and equality of working conditions under Article 15 of the Charter.

Case Law

There is no case law of the European Court of Justice which explicitly interprets Article 5 of the Charter.

The European Court of Human Rights has made a number of important rulings in this area, which inform the interpretation of Article 5 of the Charter, including:

In Siliadin v France (73316/01), the Court held that Member States have the positive obligation to take sufficient and effective action to combat practices by private parties which violate Article 4.

In Rantsev v Cyprus and Russia (25965/04) the Court held that states must “put in place adequate measures regulating businesses often used as a cover for human trafficking. Furthermore, a state’s immigration rules must address relevant concerns relating to encouragement, facilitation or tolerance of trafficking”. States must also take “operational measures to protect victims, or potential victims”, though it also stated that “impossible or disproportionate” burdens should not be imposed on the authorities. The Court also found that there is a positive obligation to investigate situations of potential trafficking and to cooperate with the relevant authorities of other states concerned.

In Chowdury and Others v Greece (21884/15), the Court held that the claimants’ treatment amounted to forced labour though it fell short of servitude. The Court found that, despite initial consent given to do the work, many factors made the applicants vulnerable to exploitation, including the employer’s conduct, their fear that if they stopped working they would never be paid and their irregular migration status, which made them fear the authorities.

In C.N. and V. v France (67724/09), the Court ruled that Member States should penalise and prosecute effectively any act aimed at maintaining a person in a situation of slavery, servitude or forced or compulsory labour.

Mainstreaming

The EU Anti-trafficking Directive 2011/36/EU adopts a comprehensive approach and establishes minimum rules concerning the definition of criminal offences and sanctions, as well as common provisions to strengthen victim's protection, assistance and support, as well as prevention of trafficking in human beings in the EU.

Other EU legislations have an impact on victims of trafficking in human beings:

The EU Forced Labour Regulation (EU) 2024/3015 lays down rules prohibiting economic operators from placing and making available on the EU market or exporting from the EU market any products made with forced labour.

Many provisions the incoming Asylum and Migration Pact – which be in force from July 2026 – aims to enhance the protection of vulnerable groups, including victims of trafficking, by introducing stronger safeguards and references to "vulnerable" persons and groups, which can include victims of the trafficking in human beings. In particular, the revised Reception Conditions Directive (EU) 2024/1346 lists victims of trafficking as among the categories of applicants who have special reception needs. It calls on Member States to ensure they have access to medical and psychological treatment and care, including rehabilitation and counselling services. The Qualification Regulation (EU) 2024/1347 calls on Member States to take account of the special needs of trafficking victims, and the Eurodac Regulation (EU) 2024/1358 refers to accessing data on trafficking victims for investigation proceedings.

The Victims' Rights Directive 2012/29/EU establishes minimum standards on the rights, support and protection of victims of crime. Particular recognition is given to victims of trafficking, and the Directive calls for a "a strong presumption that those victims will benefit from special protection measures."

Under the Framework establishing the European Arrest Warrant (2002/584/JHA), trafficking in human beings is one of the listed offences for which no double criminality check is required.

Reference Materials

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Directive 2011/36/EU of the European Parliament and of the Council of 5 April 2011 on preventing and combating trafficking in human beings and protecting its victims, and replacing Council Framework Decision 2002/629/JHA

Regulation (EU) 2024/3015 of the European Parliament and of the Council of 27 November 2024 on prohibiting products made with forced labour on the Union market

Council of Europe Guide on the Interpretation of Article 4 ECHR

United Nations Slavery Convention

International Labour Organisation - Forced Labour Convention

FREEDOMS

Article 6 – Right to liberty and security

Everyone has a right to liberty and security of person.

Description
The right to liberty and security of person protects an individual against unlawful or arbitrary deprivation of liberty – in the form, for example, of imprisonment and detention. The Article mirrors Article 5 of the European Convention on Human Rights (ECHR) and must therefore be interpreted in accordance with that Article, and how that has been interpreted/applied by the European Court of Human Rights (ECtHR).

The right to liberty and security is not absolute. Indeed, Article 6 of the Charter, read in conjunction with Article 5 of the ECHR, provides for a number of situations where a restriction of liberty is justified, including:

(a) the lawful detention of a person after conviction by a competent court;

(b) the lawful arrest or detention of a person for noncompliance with the lawful order of a court or in order to secure the fulfilment of any obligation prescribed by law;

(c) the lawful arrest or detention of a person in a pre-trial context with a view of bringing them to justice;

(d) the detention of a minor by lawful order for the purpose of educational supervision or his lawful detention for the purpose of bringing him before the competent legal authority;

(e) the lawful detention of persons for the prevention of the spreading of infectious diseases;

(f) the lawful arrest or detention of a person to prevent his effecting an unauthorised entry into the country or of a person against whom action is being taken with a view to deportation or extradition.

The European Court of Human Rights has clarified that a person's right to liberty and security corresponds to both a negative and a positive obligation on the State. The negative obligation on the State provides that it shall not unlawfully or arbitrarily deprive an individual of their liberty — in other words, a person shall not be unlawfully or arbitrarily detained by State authorities. Pursuant to their positive obligation, States must take reasonable steps to protect individuals from unlawful detention by private persons, particularly where authorities knew or ought to have known of the risk. In addition, there are procedural safeguards flowing from the right to liberty and security, including the right of a person to be informed promptly and in a language one can reasonably be expected to understand of the reasons for the arrest or detention, as well as any charges being brought against them; the right to a speedy and effective remedy, including being brought before a judge to determine the legality of one's deprivation of liberty; and the right to compensation if the detention is found to be unlawful. These safeguards are clearly set out in sub-articles to Article 5 of the ECHR.

Case Law
The Court of Justice of the EU has considered Article 6 in a number of cases, including:

IR (C-649/19): Article 6 of the Charter does not require persons arrested under an EAW to be granted all the information rights provided to suspects in domestic criminal proceedings, as long as the surrender procedure includes sufficient safeguards ensuring liberty and fair trial rights are protected after arrest.

IR (C-649/19): The issuing judicial authority must, as part of the second level of protection, examine objectively all incriminatory and exculpatory evidence and assess the proportionality of issuing the warrant, free from external instruction. [Opinion of Advocate General Pikamäe, C-649/19, EU:C:2020:758, para 86, referring to Article 5 ECHR].

PPU - Ministerio Fiscal (C-36/20): In view of the importance of the right to liberty enshrined in Article 6 and the gravity of the interference with that right which detention represents, migration detention should be imposed only in so far as is strictly necessary.

PPU – Bouskoura (C-387/24): Continued detention does not *per se* violate the right in Article 6 of the Charter, when it is imposed in accordance with general and abstract rules, whereas immediate release is necessary if the provisions set out in Directive 2008/115, Directive 2013/33 and the Dublin III Regulation are no longer satisfied. See also PPU (Joined Cases C-924/19, PPU and C-925/19, PPU).

PPU – N (C-601/15): Specific to detention standards for asylum seekers held for reasons of national security and public order, in accordance with Article 8(e) Reception Conditions Directive. Court concluded that detention on these grounds, i.e. arrest or detention of a person against whom action is being taken with a view to deportation or extradition, is in line with Article 6. The court also emphasises that the rights contained in the Charter have the same meaning and scope as those laid down by the ECHR, but the latter does not constitute a legal instrument which is formally incorporated into EU law and thus the examination of the questions at hand must be undertaken solely in light of the fundamental rights guaranteed by the Charter.

Deutsche Umwelthilfe (C-752/18): On coercive detention of public officials for non-compliance with environmental injunctions. Detention is compatible with the right to liberty only if it is based on accessible, precise, and foreseeable domestic law and meets the conditions of Article 52(1) of the Charter.

Rayonna prokuratura Lom (C-467/18): On the right to information (Directive 2012/13), access to a lawyer (Directive 2013/48), and presumption of innocence (Directive 2016/343) in judicial proceedings for psychiatric committal. Article 6 applies to proceedings leading to psychiatric detention of persons found to have committed criminal acts while in a state of insanity and this right must be interpreted in line with Article 5 ECHR, ensuring protection against arbitrary detention.

PPU -Mahdi (C-146/14): On detention review in accordance with Directive 2008/115/EC (Return Directive). Any decision adopted by the competent authority, on expiry of the maximum period allowed for the initial detention of a third-country national, on the further course to take concerning the detention must be in the form of a written measure that includes the reasons in fact and in law for that decision.

The European Court of Human Rights have considered issues relevant to Article 6 of the Charter and Article 5 ECHR. For more on the European Court of Human Rights approach to Article 5, see Guide to the application of this provision by the Court.

Mainstreaming

Directive 2012/13/EU on the Right to Information in Criminal Proceedings mentions Article 6 in the context of the right to information in criminal proceedings, as well as the right to information of persons subject to a European Arrest Warrant. Any restrictions on the right to liberty and security must not exceed those permitted in accordance with Article 5 ECHR and inferred from the case law of the European Court of Human Rights.

Directive 2013/48/EU on the Right of Access to a Lawyer in Criminal Proceedings and in European Arrest Warrant Proceedings promotes the application of provisions of the Charter, amongst which Article 6, by building upon Article 5 ECHR as interpreted by the ECtHR. In its case-law, on an ongoing basis, the ECtHR sets standards on the right of access to a lawyer (e.g., fairness of proceedings requires that a suspect or accused person be able to obtain the whole range of services specifically associated with legal assistance), emphasising the fundamental aspects of the defence.

Directive 2011/36/EU on Preventing and Combating Trafficking in Human Beings and Protecting its Victims mentions Article 6 in the context of rules concerning the definition of criminal offences and sanctions in the area of trafficking in human beings. The Directive refers to the obligation to respect fundamental rights and to observe the principles recognised in particular by the Charter of Fundamental Rights of the European Union, and notably the right to liberty and security. See also Directive (EU) 2024/1712, amending the above, Directive 2011/93/EU on Combating the Sexual Abuse and Sexual Exploitation of Children and Child Pornography and its ongoing revision

Directive (EU) 2023/977 on the Exchange of Information between the Law Enforcement Authorities of Member States mentions Article 6 in the context of rules for the adequate and rapid exchange of information between the competent law enforcement authorities for the purpose of preventing, detecting or investigating criminal offences. The Directive refers to the obligation to respect fundamental rights and to observe the principles recognized by the Charter, in particular the right to liberty and security.

Directive (EU) 2024/1346 Laying down Standards for the Reception of Applicants for International Protection affirms that it seeks to ensure full respect for human dignity and to promote the application of Article 6 of the Charter, and that it has to be implemented accordingly.

Regulation (EU) 656/2014 establishing Rules for the Surveillance of the External Sea Borders references Article 6 in the context of border surveillance operations carried out by Member States at their external sea borders. The Regulation refers to the obligation to respect fundamental rights and to observe the principles recognised by the Charter, in particular the right to liberty and security. See also Regulation (EU) 2019/1896 on the European Border and Coast Guard.

Regulation (EU) 2017/2226 establishing an Entry/Exit System (EES) to register entry and exit data and refusal of entry data of third-country nationals crossing the external borders of the Member States and determining the conditions for access to the EES for law enforcement purposes mentions Article 6 in the context of registration of non-EU citizens in the Schengen Area through automation and recalls the obligation to respect fundamental rights and observes the principles recognised by the Charter, in particular the right to liberty and security. See also Regulation (EU) 2025/1534 on temporary derogations from certain provisions of Regulations (EU) 2017/2226 and (EU) 2016/399 as regards the progressive start of operations of the Entry/Exit System amending the above.

Regulation (EU) 2021/1134 for the Purpose of Reforming the Visa Information System mentions Article 6 in the context of the functionalities of and the responsibilities for the Visa Information System, and refers to the fundamental rights and principles recognised by the Charter, in particular the right to liberty and security.

Regulation (EU) 2023/1543 on European Production Orders and European Preservation Orders for Electronic Evidence in Criminal Proceedings and for the execution of custodial sentences following criminal proceedings mentions Article 6 in the context of rules under which an authority of a Member State, in criminal proceedings, may issue a European Production Order or a European Preservation Order. The Regulation refers to fundamental rights and to the obligation to observe the principles recognised by Article 6 TEU and the Charter, including the right to liberty and security.

Reference Materials

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Article 7 – Right to private and family life

Everyone has the right to respect for their private and family life, home and communications.

Description

Article 7 of the Charter protects the right to private and family life, home and communications.

This right is not absolute and is subject to limitations in line with Article 52(1) of the Charter. By virtue of Article 52(3) of the Charter, the meaning and scope of the right are the same as Article 8 of the ECHR.

The terms of Article 7 of the Charter, in line with Article 8 of the ECHR, should be interpreted broadly. The notion of private life encompasses the physical, psychological, and moral aspects of the personal integrity, identity, and autonomy of individuals. This means that the characteristics that compose the identity of a physical person (name, ethnic background, gender identification, sexual orientation, etc.) are also covered by Article 7. "Private life" has also been held by both the CJEU and the ECtHR to encompass not just personal activities but professional and business activities. Article 7 is closely related to Article 8 on protection of personal data. It is also related to other Articles including Article 24 relating to rights of the child, and Article 33 relating to professional and family life.

The understanding of "family" is also broad to include extended members (including grandparents and stepfamily), as well as a variety of forms (biological, adopted, step-family) as well as same-sex parents. The understanding of "home" in Article 7 includes not on private residence, but also business premises. Similarly, "communications" includes not only private correspondence but also professional or business communications.

Case Law

Various judgments of the EU's Court of Justice have shed light on the interpretation and application of Article 7 of the Charter:

Case C-460/23 OB v Procura della Repubblica: punishing a person for assisting third country minors, over whom he or she exercises actual care, to enter the territory of a Member State in an unauthorised manner would undermine the essence of Article 7 of the Charter.

Case C-673/16, Coman: the Court held that a stable relationship between two people of the same sex can fall under the notions of both "private life" and "family life" as protected by Article 7 of the Charter. Therefore, the freedom of movement must be interpreted to include same-sex spouses on an equal footing with heterosexual couples.

Case C-490/20 *VMA*: "national identity" cannot justify refusing to recognise the birth certificate of an EU citizen child issued by another Member State which listed their same-sex parents. The Court held this violated the child's right to private and family life.

Case C-129/18, SM: while a child in permanent legal guardianship under the Algerian Kafala system does not constitute a "direct descendant" for the purpose of the EU Citizens' Rights Directive, having regard to Article 7, the child can be considered "other family relative" for the purpose of the Directive.

Joined Cases C-199–201/12, X, Y and Z v Netherlands: Member States' measures designed to establish the creditability of asylum seekers claiming persecution on grounds of sexual orientation are subject to the requirements of the Charter, particularly the right to private life under Article 7.

Case C-94/00, Roquette Frères: the Court held that the protection of the "home" under EU law extends to business premises.

Case C-60/00, Carpenter: in the free movement context, the right to family life is to be understood broadly.

Case C-400/10 PPU, JMcB v L E: in terms of a father's right of custody, Article 7 must be read in a way which respects the obligation to take into consideration the child's best interests, and considering the fundamental right of a child to maintain on a regular basis personal relationships and direct contact with both of his or her parents.

Joined Cases C-293/12 and C-594/12, Digital Rights Ireland v Minister for Communications, Marine and Natural Resources: concerning the retention of data generated or processed in connection with the provision of public communications networks services, the Court held that retention for the purpose of possible access by the competent national authorities "directly and specifically affects private life and, consequently, the rights guaranteed by Article 7 of the Charter", and as the interference is "particularly serious", it must therefore be governed by clear and precise rules.

Case C-419/14, WebMindLicenses: the Court examined whether criminal authorities could intercept telecommunications and seize emails without the knowledge of the person concerned, and whether such evidence could be used by tax authorities. The Court held that such interception constitutes an interference with the right to private life under Article 7 of the Charter. This kind of interference is only permissible if national laws and procedures include clear, effective safeguards to protect individuals against abuse or arbitrary action by the authorities.

In addition to the CJEU, the European Court of Human Rights has also clarified the implications of the Convention's right to private and family life in a rich body of case law, including the following cases.

Niemietz v Germany, judgment of 16 December 1992, 13710/88: the right to private life can include professional and business activities.

Société Colas Est v France, judgment of 16 April 2002, 37971/97: the Court extended the definition of "home" to a company's registered offices, branches or other premises in a case where French companies whose offices had been searched by French competition authorities.

Schalk and Kopf v Austria, judgment of 24 June 2010, 30141/04: same sex couples have a right to family life.

Marckx v Belgium, judgment of 13 June 1979, 6833/74: Article 8 ECHR places a positive obligation on states to remove discrimination against children born out of wedlock for the purposes of inheritance.

Mainstreaming

e-Privacy Directive 2009/136/EC covers processing of personal data and the protection of privacy including provisions on the security of networks and services; the confidentiality of communications; access to stored data; and spam.

Regulation (EU) 2019/817 on the interoperability between EU information systems establishes border, visa, asylum data-sharing systems. The Regulation acknowledges that sharing this information can impact on Article 7 (and 8) and commits to full respect for the rights. The justification for data processing is necessity for border management and internal security, which is balanced against privacy rights under the Charter.

Regulation (EU) 2019/880 on the introduction and the import of cultural goods aims to prevent the trafficking of illicit cultural property, including allowing personal data processing where necessary for criminal investigations. Recognising Articles 7 and 8 of the Charter, the Regulation requires that any interference with private life be strictly necessary, proportionate, and supported by appropriate legal and procedural safeguards.

Directive 2016/800 on procedural safeguards for Children in criminal proceedings establishes procedural safeguards for persons under the age of 18 who are suspected or accused of a criminal offence. The Directive explicitly recognises the need to "ensure the effective and regular exercise of the right to family life" — invoking Article 7 of the Charter. To do this, it states that children should have the right to maintain regular contact with their parents, family and friends through visits and correspondence, unless exceptional restrictions are required in the child's best interests or in the interests of justice.

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ECHR Guide on Article 8 - Right to respect for private and family life, home and correspondence (coe.int)

UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

UN Convention on the Rights of the Child (UNCRC)

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.

<u>Description</u>
Article 8 of the Charter of Fundamental Rights of the European Union enshrines the right to the protection of personal data.

In practice, Article 8 governs the conditions under which personal data may be collected, processed and used by both public authorities and private actors. It applies across a wide range of contexts, including law enforcement databases, migration and asylum systems, employment monitoring and digital platform services. The provision requires that any processing be based on a clear legal basis, pursue a specific purpose and remain limited to what is strictly necessary, while ensuring adequate safeguards against misuse. For individuals, Article 8 operates through enforceable rights, notably access to personal data, rectification of inaccuracies and the possibility to challenge unlawful processing before a court or supervisory authority. In this way, it functions as a mechanism of control over the use of personal information and as a constraint on administrative and private decision-making based on such data.

Personal data refers to information related to an identified or identifiable person, also referred to as "data subject", as defined in Article 4(1) of the General Data Protection Regulation (GDPR – Regulation (EU) 2016/679)).

Article 8 establishes the obligation to process personal data fairly and for specific purposes. These conditions are further specified under the EU data protection acquis which includes the GDPR and the Law Enforcement Directive (LED), which together require that data is processed lawfully, fairly and transparently for specified purposes and on the basis of the consent of the person concerned or another legitimate basis laid down by law. Lawfulness requires a valid legal basis for processing. Fairness requires that personal data be processed in a manner that respects the reasonable expectations of the data subject and does not involve misleading, unexpected or unduly detrimental uses. Transparency requires that individuals are clearly informed about how and why their data is processed. Consent is expressly listed as an important legal basis to authorise the processing of personal data, which may also take place through other legitimate grounds provided for by law. As a general rule, consent must be freely given, specific, informed, and unambiguous (Article 4(11) GDPR, Article 7 GDPR).

Article 8 enshrines two concrete rights deriving from the general right to the protection of personal data. These are the right to access data concerning the data subject and the right to have the collected personal data rectified. The EU data protection acquis specifies the application of these rights and develops additional rights, such as the right to correct or erase data.

The third paragraph of Article 8 is unique within the Charter system by requires specific supervision for the compliance of this right. In other words, it provides that compliance with paragraphs 1 and 2 shall be subject to control by an independent authority.

Like most fundamental rights, Article 8 of the Charter is not absolute. According to Article 52 of the Charter, the right to the protection of personal data can be limited if the measures taken are provided by law, they respect the essence of the right and are necessary and genuinely meet objectives of general interests recognised by the Union, subject to principle of proportionality. The General Data Protection Regulation provides for a general legal framework for the processing of individuals' personal data. Article 5 of the GDPR provides for a series of principles that shall be respected for lawful processing of personal data while Article 6 of the GDPR provides for six specific legal basis on the basis of which personal data may be processed, provided that the conditions laid down are fulfilled.

As part of the EU data protection acquis, there is further secondary legislation that concerns the application of Article 8 of the Charter, and which is directly applicable across the EU. These include the aforementioned LED Directive and the Regulation (EU) 2018/1725 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, (EU DPR) among others.

Case Law

The Court of Justice of the EU has considered Article 8 in a number of cases, including:

In Österreichische Datenschutzbehörde v WK (C-33/22), the Court considered the applicability of the GDPR in a Committee of inquiry in a Member State. The committee was tasked to assess political influence over the Federal Office for the Protection of the Constitution and Counterterrorism. First, the Court addressed the material scope of the GDPR and interpreted it broadly. It also stated that the restrictions to its scope had to be interpreted narrowly. In this sense, the Court concluded that the fact that an activity is carried out by a committee of inquiry set by the parliament of a Member State does not make it fall outside the scope of EU Law, meaning that GDPR obligations were applicable.

In VP v Országos Idegenrendészeti Főigazgatóság (C-247/23), an Iranian national obtained refugee status in Hungary. During the proceedings, VP provided certificates that, despite being born female, their gender identity was male. Nevertheless, VP was registered as a female. Since the asylum authorities kept their data, VP submitted a request based on Article 16 GDPR for a rectification of the personal data they had. In the preliminary ruling, the Court noted that Article 16 GDPR gives expression to the right under Article 8(2) of the Charter to have personal data rectified. The Court also took into consideration the principle of accuracy under Article 5 GDPR. The Court indicated that the assessment of whether personal data is accurate and complete must be made in the light of the purpose for which the data was collected. In this case, the information relating to VP's gender identity was personal data within Article 4 GDPR and it had been subjected to processing. It also held that a Member State cannot rely on the absence of a procedure within its national law for the recognition of transgender identity to limit the right to rectification under Article 8 of the Charter.

Privacy International (C-623/17) concerned a British law enabling the Secretary of State to request providers to facilitate bulk metadata to security agencies. The Court held that such practice was incompatible with EU legislation (the e-Privacy Directive, Directive 2002/58/EC). Although the e-Privacy Directive concerns protection of the right to privacy guaranteed under Article 7 of the Charter, the Court notes the link between Articles 7 and 8 of the Charter and refer to both in its ruling. In doing so, the Court clarified that for a limitation to the right to the protection of personal data to be proportionate, the legislation must lay down clear rules on the scope and application of the measure in question so that the persons affected have sufficient guarantees that data will be effectively protected against risk of abuse, and limit the interference to the strictly necessary situations. Such safeguards are of even greater relevance when personal data is subjected to automated processing.

CG v Bezirkshauptmannschaft Landeck (C-548/21) concerned the application of the Law Enforcement Directive (LED), which applies to the processing of personal data for the prevention, investigation, detection or prosecution of criminal offences. The Court had to determine whether the Directive, read in light of Article 8 of the Charter, afforded national authorities the possibility of accessing data contained in a mobile phone. The Court concluded that national authorities are not precluded from the possibility to access data contained in mobile phones as long as the laws allowing for it, define with sufficient precision the nature or categories of the offences concerned, ensure the respect for the proportionality principle, and are subject to prior review by a judge or an independent administrative body.

Mainstreaming

The Impact Assessment laying down harmonised rules on artificial intelligence, although including a direct reference to Article 8, took into consideration the obligations and rights enshrined in the provision and in the EU acquis on data protection, especially under the GDPR. After assessing the available policy options, the Commission selected the one that would oblige providers and deployers of AI systems to take mitigating measures to protect personal data throughout the whole AI cycle. The Artificial Intelligence Act, adopted in 2024, does not replace the existing obligation on the protection of personal data set forth under the GDPR, which continue to apply.

Another example of an impact assessment containing data protection considerations is the one accompanying the proposal for a Directive on mandatory automatic exchange system of information in the field of taxation. The Directive foresaw an increase in the amount of information that would be exchanged between Member States in order to increase transparency in tax rulings and address aggressive tax planning (e.g. taking advantages from the technicalities of a tax system or mismatches between Member States tax systems in order to reduce or avoid tax liabilities). The Commission concluded that the selected policy option would minimize the potential negative consequences on the right to the protection of personal data by, for example, foreseeing that a data protection safeguard would be incorporated in case of a binding legislative proposal by a Member State. In any case, the Commission highlighted that the restriction of the right would be limited and proportionate to achieving the objective of increased transparency.

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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.

Description

The right to marry and the right to found a family enshrine protection of a key aspect of individual freedom, which lies at the core of private life and has strong implications for individual's participation in society. Article 9 of the Charter recognises two distinct rights: the right of any person to marry and the right to found a family. This separate coverage of the right to marry and the right to have a family as two distinct rights suggests that marriage is not necessarily connected with the right to found a family. EU Member States are obliged to guarantee the full enjoyment of those two rights, including the protection of individuals against restrictions to those freedoms, whenever they apply EU law.

Unlike Article 12 European Convention on Human Rights (ECHR), which it mirrors, Article 9 of the Charter does not contain any explicit references to gender or to any specific family structure. The formulation of the provision, relying on the national legislation of marital and family foundation regimes across different Member States, does not result in a harmonized system where the right to marry and the right to found a family are protected in the same manner across countries, but rather on a heterogenous one which accommodates different levels of protection, based on the constitutional regulation in the respective countries. This includes same-sex marriage and arrangements other than marriage for founding a family, when national legislation so provides. This provision also supports the recognition of marriages (not registered partnerships) concluded in another Member State for the purpose of the exercise of the rights derived from EU law which stems for the right to free movement enshrined in Article 21 Treaty on the Functioning of the EU, although Article 9 is not the basis for marriage recognition.

Case Law

The Court of Justice of the EU has considered Article 9 in a number of cases, including:

The Court of Justice of the European Union has considered the right to marry and the right to found a family in V.M.A. v Stolichna obshtina, rayon "Pancharevo" (Case C-490/20). In this case, the Court affirmed that Member States are "free to decide whether or not to allow marriage and parenthood for persons of the same sex under their national law", but in order to comply with EU law, they must recognize "the civil status of persons that has been established in another Member State in accordance with the law of that other Member State". The case concerned the daughter of a same-sex couple married in Spain, whose birth certificate mentions the two mothers. The Bulgarian authorities refused to issue a birth certificate for her, arguing that registration of two same-sex parents in a birth certificate is contrary to Bulgarian public policy. The judgment of the Court of Justice imposes the recognition of the parenthood established in Spain for the purpose of the exercise of the right of free movement (but does not extend to the issuance of a birth certificate).

Article 9 of the Charter correlates with Article 12 ECHR, although Article 9 is broader, as it also covers the right to found a family. The following ECHR caselaw is therefore relevant:

In Chapin and Charpentier v France (ECHR 199(2016)), Hämäläinen v Finland (ECHR 219(2014)), and Oliari and Others v. Italy (18766/11 and 36030/11), the Court reiterated its finding in Schalk and Kopf v Austria (30141/04), that neither Article 12 nor Article 8, taken together with Article 14, could be interpreted as imposing an obligation on Contracting States to grant same-sex couples access to marriage. In Schalk and Kopf v Austria (30141/04) two male Austrian nationals were not allowed to marry in Austria on the basis that Austrian law only permitted opposite-sex marriage, the European Court of Human Rights found that Article 12 ECHR does not impose an obligation on States to grant same-sex marriage. The Court also established that this provision must be interpreted in light of evolving traditions, with States retaining a margin of appreciation.

In Goodwin v UK (28957/95), a case concerning the lack of legal recognition of a UK national's post-operative sex, the ECtHR emphasized that there had been major social changes in the institution of marriage since the adoption of the ECHR, and that the impossibility for a post-operative transsexual to marry in her assigned gender violated Article 12 ECHR.

Mainstreaming

Council Regulation (EU) 2016/1103 implementing enhanced cooperation in the area of jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property: According to Recital 73, the regulation is found to respect and observe Article 9 of the Charter. It was adopted to strengthen cooperation between Member States in recognising decisions on matrimonial property regimes made in one EU country in other Member States.

The objective of the Regulation (EU) 2016/1191 on promoting the free movement of citizens by simplifying the requirements for presenting certain public documents is to promote free movement of EU citizens by facilitating the free circulation of certain public documents (Recital 57 of the Regulation). The public documents covered by the Regulation include documents issued by a Member State authority in accordance with its national law for the primary purpose of establishing the fact of, inter alia, marriage (including capacity to marry and marital status), registered partnership (including capacity to enter into a registered partnership and registered partnership status), parenthood, and adoption (paragraph 6). Notably, the regulation should be applied in accordance with the fundamental right to marry and found a family, as well as other fundamental/specified rights (Recital 56 of the Regulation). It is important to note however that this Regulation does not cover the recognition of the legal effects relating to the content of the public documents.

The Commission Notice "Guidance on the right of free movement of EU citizens and their families" (C/2023/1392) integrates the relevant case law of the Court of Justice of the EU delivered since 2009 and provides for the necessary clarifications on specific issues that have been identified when applying the acquis

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Council of Europe, Guide on Article 12 of the European Convention on Human Rights

UN General Assembly Resolution 70/138 (2016)

UN General Assembly Resolution 71/175 (2016)

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.

2. The right to conscientious objection is recognised, in accordance with the national laws governing the exercise of this right.

Description

Freedom of thought, conscience and religion means everyone has the right to hold their own beliefs.

The right protects both *internal belief,* which is absolute and cannot be restricted, and *external expression*, which may be limited under certain conditions. External expression includes actions such as wearing religious symbols, participating in rituals, or observing religious holidays.

The freedom of thought itself is absolute. It protects the inner realm of mental autonomy and cannot be restricted under any circumstances. Closely related is the freedom of belief, which includes the right to hold and change religious or non-religious convictions.

Article 10(1) also protects the freedom to manifest religion or belief, individually or in community, in public or private. This can take the form of worship (such as prayer or ritual), teaching (sharing beliefs), observance (observing religious holidays or dietary rules), and practice (daily conduct guided by belief).

Limitations of external expression are outlined in Article 10(2), which recognises the right to conscientious objection in accordance with national laws. It protects individuals who refuse to perform certain acts—like military service or medical procedures—on the basis of conscience. This is a specific form of manifestation, not a limitation clause.

Limitations on external manifestation are governed by Article 52(1) of the Charter and must be lawful, necessary, proportionate, and respectful of the essence of the right. As Article 52(3) requires alignment with the European Convention on Human Rights (ECHR), Article 9(2) ECHR applies: limitations must be prescribed by law and necessary in a democratic society for aims such as public safety, health, morals, or the rights of others.

Case Law

The Court of Justice of the European Union has considered Article 10 in a number of cases, including:

In Achbita v G4S Secure Solutions NV (C-157/15), the court ruled that an employer's internal policy prohibiting employees from wearing visible religious symbols at work could be permissible if it pursued a policy of neutrality and was applied consistently. However, such bans must still be necessary and proportionate.

In Bougnaoui v Micropole SA (C-188/15), the Court ruled that an employer's decision to dismiss an employee for wearing an Islamic headscarf in response to a client's objection could constitute direct discrimination based on religion. The Court emphasized that such a dismissal could not be justified by the client's preference alone and held that a customer's desire not to see religious symbols does not amount to a “genuine and determining occupational requirement” under EU law.

In Vera Egenberger v Evangelisches Werk für Diakonie und Entwicklung eV (C -414/16), the Court ruled that while religious organisations may impose faith-based requirements for certain roles, such requirements must be genuine, legitimate, and objectively justified. National courts must be able to assess whether the requirement is appropriate in light of the nature and context of the job, in line with Articles 10 and 21 of the Charter.

In IR v JQ (C -68/17), the Court found that the dismissal of an employee by a Church employer for remarrying after divorce must be assessed for its proportionality and necessity. Religious criteria in employment decisions must not violate Charter rights, particularly Articles 10 and 47, and national courts must ensure such measures are justified and compatible with EU law.

Outside employment, the Court addressed a different clash in Liga van Moskeeën (C-426/16), upholding a restriction on religious slaughter without stunning under Directive 1099/2009. The Court found the measure compatible with Article 10, as it aimed to protect animal welfare, a legitimate objective, and struck a fair balance between religious freedom and other public interests.

In Centraal Israëlitisch Consistorie van België e.a. (C-336/19), the Court considered that the rules restricting ritual slaughtering in Flanders (Belgium) based on Regulation 1099/2009 on the protection of animals at the time of killing respect freedom to manifest religion as guaranteed in Article 10(1) of the Charter. While limiting this freedom, these rules were held to be within the margin of appreciation granted to Member States in this matter and proportionate to the aim of the protection of animal welfare (based on Article 13 TFEU).

Article 10 of the Charter correlates with Article 9 ECHR, as confirmed in the *Explanations relating to the Charter of Fundamental Rights*, which state that Article 10(1) corresponds to Article 9 ECHR and must be interpreted accordingly, in line with Article 52(3) of the Charter. Thus, the following ECHR caselaw is helpful in understanding its remit.

In Kokkinakis v Greece (14307/88), the Court held that while states may restrict religious manifestations, such restrictions must be lawful, pursue a legitimate aim, and be necessary in a democratic society. The case set a key standard under Article 9 ECHR for assessing state limitations on religious freedom, particularly concerning proselytism.

In Eweida and Others v the United Kingdom (48420/10), the Court considered whether prohibiting employees from wearing visible religious symbols (crosses) infringed Article 9 ECHR. It held that employers must strike a fair balance between employees' religious rights and their organisational interests. In Eweida’s case, the ban was found disproportionate.

In Lautsi v Italy (30814/06), a complaint was brought against the presence of crucifixes in Italian public-school classrooms. The Court eventually upheld the State’s margin of appreciation, recognising cultural traditions and finding no violation of Article 9.

Mainstreaming

Provision of Article 10 of the Charter can be found in various EU legislative instruments, guidelines, and other policy frameworks that may affect the freedom of religion and belief in multiple areas of public life and EU policy

The Employment Equality Directive (Directive 2000/78/EC) prohibits discrimination based on religion or belief in employment and occupation. This includes both direct and indirect discrimination, harassment and instruction to discriminate.

The EU Guidelines on the promotion and protection of freedom of religion or belief (2013) guide the EU’s external actions, emphasizing dialogue, prevention of violence based on religion or belief, and support for victims of discrimination.

Other binding instruments of EU secondary law also reflect the values protected by Article 10 of the Charter. The Qualification Directive (2011/95/EU) sets out the conditions under which individuals fearing persecution on grounds of religion may qualify for international protection within the EU. The General Data Protection Regulation (GDPR) (2016/679/EU) identifies religious belief as a special category of personal data, requiring stronger safeguards for its processing, thereby reinforcing the right to privacy in connection with freedom of belief. The Framework Decision (2008/913/JHA) on combating certain forms and expressions of racism and xenophobia by means of criminal law requires Member States to criminalise hate speech and hate crimes, including those motivated by religious hatred, thus protecting individuals' freedom to hold and express their religious or non-religious convictions without fear of violence or discrimination.

While the EU recognises the importance of conscientious objection (e.g. in healthcare or military service), Article 10(2) of the Charter explicitly limits this to where it is allowed by national law. Under Article 168 of the Treaty on the Functioning of the EU, the EU has only supporting competence in health, meaning nationals regulations prevail, and the Charter applies only when implementing EU law.

Reference Materials

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European Court of Human Rights Factsheet: Freedom of Religion

EU Guidelines on the promotion and protection of freedom of religion or belief (EEAS)

Employment Equality Directive (Directive 2000/78/EC)

Regulation 1099/2009 on the protection of animals at the time of killing

UN Human Rights Council Resolutions on Freedom of Religion or Belief (Adopted Annually)

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.

Description

Freedom of expression is considered one of the most important rights that a liberal democracy should guarantee. It is protected in the constitutions of Member States, the United Nations' International Covenant on Civil and Political Rights (Article 19) and the European Convention on Human Rights (Article 10). Free speech has intrinsic value for individuals, as it is indispensable for one's personal development and self-realisation, but is also a prerequisite for democratic government: it allows people to engage in political deliberation, form and express views about matters of public interest, and hold their government to account.

There are two paragraphs in Article 11. The first sentence of the first paragraph guarantees the right to freedom of expression to everyone, and the second sentence lists specific instances of the right: holding opinions and receiving and imparting information. This does not mean that those are the only ways free expression can be exercised; the enumeration in the second sentence is indicative, not exhaustive. Article 11(2) protects another specific aspect of free speech: media freedom and pluralism. The use of the word "media" refers to that the category of beneficiaries is very broad and includes the traditional press, the electronic media, and non-traditional forms of communication.

Like most other fundamental rights in the Charter, freedom of expression is not absolute and can be limited if there is a legitimate public interest reason, but the limitation must respect the essence of the right and be proportionate (Article 52(1) of the Charter). Speaking one's mind is closely linked to thinking and forming opinions, so there is some overlap between Article 11 and Article 10 on freedom of thought, conscience and religion of the Charter. Article 11 is also relevant for the rights protected in Article 12 (freedom of assembly and association), Article 13 (freedom of the arts and sciences), and Article 22 (cultural, religious and linguistic diversity).

The right under Article 11 has the same meaning and scope as freedom of expression under Article 10 European Convention on Human Rights (e.g. *Philip Morris Brands* [C-547/14]), as interpreted by the Court of Justice and confirmed in the Explanations relating to the Charter. By virtue of Article 52(3) of the Charter, the limitations which may be imposed on the right may therefore not exceed those provided for in Article 10(2) of the European Convention on Human Rights (ECHR). This is without prejudice to any restrictions which EU competition law may impose on Member States' right to introduce the licensing arrangements referred to in the third sentence of Article 10(1) of the ECHR, as mentioned in the Explanation to Article 11 of the Charter.

There is extensive case-law of the European Court of Human Rights regarding Article 10 of the ECHR, which is relevant for the interpretation of Article 11 the Charter. But, as specified in Article 52(3) of the Charter, Union law can provide a greater level of protection of fundamental rights than the protection offered under the ECHR.

Case Law

The Court of Justice of the EU has considered Article 11 in a number of cases, including:

In Patriciello (C-163/10) and Tele2 Sverige (C-203/15) the CJEU described freedom of expression as one of the values on which the Union is founded under Article 2 of the Treaty on the European Union (TEU).

In Ter Voort (C-219/91) the CJEU held that freedom of expression is also a general principle of EU law, so it can be relied on for the interpretation of other legal rules.

In Handyside v UK (5493/72) the European Court of Human Rights held that free expression is one of the essential foundations of a democratic society.

The CJEU has not yet explored in detail what the term "expression" covers, but it is clear from the case law of the European Court of Human Rights that it is a very broad concept, including not only oral and written communications but also the publication of photographs (e.g. Axel Springer v Germany (39954/08)) and actions and conduct with expressive content (e.g. Bumbeș v Romania (18079/15); Ibrahimov and Mamadov v Azerbaijan (63571/16 and 5 others); Vajnai v Hungary (33629/06)), including actions in social media platforms such as using the "Like" button (*Melike v Turkey* (35786/19)).

The Court of Justice has ruled that the following types of expression fall within the scope of Article 11 of the Charter:

Neptune (C-157/14): commercial speech, like the words used in the label of a product,

Fussl (C-555/19): the broadcast of television advertising,

Konstantin Film Produktion (C-240/18P): words used in a trademark.

In Real Madrid (C-633/22), which concerned media freedom under Article 11(2), the Court of Justice of the EU (CJEU) emphasised the role of the press as a public watchdog, investigating and imparting information on matters of public interest, as the European Court of Human Rights had previously held in relation to Article 10 ECHR. The CJEU ruled that while reputation should be protected, a manifestly disproportionate award of damages for defamation calls for very careful scrutiny by the Court because it may have a chilling effect and discourage journalists and publishers from participating in public debate. This constitutes a violation of Article 11, and courts in a Member State should refuse to enforce such an award made in legal proceedings in another Member State.

The CJEU has held that the following are legitimate reasons which can justify limitations on freedom of expression:

RTL Television (C-245/01): the protection of consumers, as viewers, from excessive advertising,

NH (C-507/18): the prevention of discrimination in employment,

RTL Nederland (C-451/22): the protection of the confidentiality of information relating to aviation safety incidents,

Peterson (C-682/18 and 683/18): the protection of intellectual property rights.

Mainstreaming

The EU has adopted legislation to strengthen the rights guaranteed in Article 11 of the Charter.

The Whistleblower Protection Directive (EU) 2019/1937) on the protection of persons who report breaches of Union law lays down common rules for the protection of individuals who report information, usually acquired in the context of their work, on breaches of EU law. It requires Member States to put in place effective mechanisms for the confidential provision of information, conduct a proper investigation, protect whistleblowers from retaliation, and penalize anyone who tries to stop them from speaking out. The Directive notes that disclosures about harms to the public interest are an aspect of the whistleblower's right to freedom of expression and a necessary means for the early detection of such harms.

The Anti-SLAPP Directive (EU) 2024/1069 on protecting persons who engage in public participation from manifestly unfounded claims or abusive court proceedings ('Strategic lawsuits against public participation') is the Union's response to the threat abusive legal claims pose for freedom of expression. SLAPPs (Strategic lawsuits against public participation) are lawsuits which aim to intimidate and silence those who speak publicly about matters of public interest. The Directive adopts procedural rules which protect speakers from cross-border SLAPPs. It provides that courts can dismiss abusive lawsuits at the earliest possible stage in the proceedings and impose on claimants penalties such as the payment of compensation or the publication of the court decision.

The European Media Freedom Act Regulation (EU) 2024/1083 establishes a common framework for media services in the internal market and aims to safeguard the independence and pluralism of media operating in the Union's internal market. It guarantees the editorial independence of media outlets, protects the confidentiality of journalistic sources, and limits the circumstances under which national authorities are allowed to carry our surveillance of journalists. It also includes specific safeguards for the independent functioning of state-owned media and the allocation of public funds for advertising in a transparent and non-discriminatory way. When a media service is provided digitally, the Act protects the media from unreasonable decisions by very large online platforms to remove content.

The Audiovisual Media Services Directive (EU) 2018/1808 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services is another law concerning the media. The Directive includes, among others, provisions on transparency of media ownership and access by the public to information about the providers of audiovisual services. As explained in the Preamble, this information is directly linked to freedom of expression because it allows the public to know who is responsible for media content and make an informed judgment about such content.

The Commission Recommendation (EU) 2021/1534 on ensuring the protection, safety and empowerment of journalists and other media professionals in the European Union aims to help strengthen media freedom and media pluralism in the EU by providing a set of standards which Member States should adopt with a view to ensuring safer working conditions for all media professionals, free from fear and intimidation, whether online or offline.

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Eric Barendt, *Freedom of Speech* (Oxford university Press 2005)

Emily B. Laidlaw, *Regulating Speech in Cyberspace: Gatekeepers, Human Rights, and Corporate Responsibility* (Cambridge University Press 2015)

Council of Europe Guide to Article 10 ECHR

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 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.

Description

Freedom of peaceful assembly means that people have the right to organise, and to gather to take part in peaceful meetings, marches and demonstrations. Violent assembly is not protected. Freedom of association protects the right to form, join and take part in "associations", including, e.g., political parties, trade unions, clubs and societies. The right includes the freedom of associations to seek, secure and utilise resources. It also includes the right to create or dissolve an association. The association must be able to pursue its activities and operate without unjustified interference. Article 12(2) concerns the application of the freedom of assembly and association in a specific context of political parties at EU level. It does not directly give rights to individuals.

Freedom of assembly and association is not absolute. It can be limited as defined within Article 52 of the Charter. Any limitation on the right must be provided for by law and the "essence" or the very core of the right must still be respected. The limitation must also be proportionate, i.e. necessary and genuinely meets objectives of general interest recognised by the EU, or the need to protect the rights and freedoms of others. Measures which make it more difficult for people to assemble for the purpose of e.g. protest, or for association to act or operate can be viewed as restrictions to these rights and must therefore be justified. In terms of associations, such restrictions this can include, for example, strengthening the requirements in relation to their registration; limiting–an association's capacity to receiving financial resources; making them subject to obligations of declaration and publication in a way that could create a negative image of them; or exposing them to the threat of penalties (such as dissolution) [see also European Commission v Hungary (C-78/18)].

Case Law

The Court of Justice of the European Union has considered Article 12 in a number of cases, including:

In Schmidberger (C-112/00), the Court accepted the Austrian government's reliance on freedom of peaceful assembly as a ground for restricting the free movement of goods. Several environmental activists in that case had blocked the Brenner Pass. The demonstration had permission to go ahead from the Austrian government. A transit lobby, representing goods carriers, invoked the free movement of goods to hold the Austrian state liable for damage suffered by the closure of the pass for multiple days.

In European Commission v Hungary (C-78/18), the Court ruled against Hungary's national rules that imposed discriminatory and unjustified obligations on associations receiving financial support from other Member States or third countries. These rules were found to violate Article 12 of the Charter by restricting foreign donations to civil society organisations.

In Asociația "Forumul Judecătorilor din România" (C-53/23), a number of associations representing judges challenged Romanian legislation which precluded their standing to challenge the appointment of prosecutors competent to conduct criminal prosecutions against judges as they could not evidence a legitimate private interest. The Court of Justice held that Article 12 merely enshrines the freedom of association, without however requiring that associations necessarily be granted standing to bring judicial proceedings to defend a general interest objective.

Article 12 of the Charter correlates with Article 11 ECHR, and so the following ECtHR caselaw is helpful in understanding its remit.

In Gorzelik and Others v Poland (44158/98), the ECtHR found that despite an interference with the freedom of association, the Government was found to have a legitimate aim of preventing disorder and protecting the right of others, which met a pressing social need of protecting existing democratic institutions and election procedures in Poland, and its measure was proportionate to this aim.

In Ouranio Toxo and Others v Greece (74989/01), the ECtHR found that to be compatible with the purpose of Article 11, the State must ensure positive obligations to secure the effective enjoyment of the right to freedom of association even in relations between individuals. Public authorities must guarantee the proper function of an association or political party without fear of interference.

In Association Rhino and Others v Switzerland (48848/07), the ECtHR found that the dissolution of an association constitutes an interference with the freedom of association and will constitute a breach of Article 11 unless prescribed by law, pursues a legitimate aim and is necessary in a democratic society for the achievement of such aim(s).

Mainstreaming

Directive 2014/36/EU on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers provides for equal treatment of seasonal workers with regard to the right to strike and the freedom of association and membership in worker’s organisations, including “the right to negotiate and conclude collective agreements”.

Directive 2014/66/EU on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer establishes an entry and residence framework for third-country nationals who are intra-corporate transferees. It establishes equal treatment and refers to freedom of association and membership in workers organisations.

Regulation 1141/2014 on the statute and funding of European political parties and European political foundations lays down the conditions governing the statute and funding of political parties at European level and political foundations at European level. It recognises on the basis of both Article 12 and Article 11 concerning freedom of expression that European citizens should be enabled to use those rights in order to participate fully in the democratic life of the Union. In its establishment of an Authority to oversee political parties and foundations at EU level, it explicitly states that in its decisions, the Authority shall give full consideration to the fundamental right of freedom of association and to the need to ensure pluralism of political parties in Europe. The right, in this way, places a duty on EU authorities to support the establishment and functioning of political parties.

Commission Recommendation (EU) 2023/2836 of 12 December 2023 on promoting the engagement and effective participation of citizens and civil society organisations in public policy-making processes sets out parameters which Member States should put in place for the effective inclusion of civil society organisations in public-decision-making and recommends measures to be put in place to create and maintain a safe and enabling environment for civil society organisations.

Communication from the Commission to the on an EU Strategy For Civil Society (COM/2025/790) which sets out a series of concrete actions at both EU and national level, including as regards the EU’s external action, to strengthen engagement with civil society, to ensure an open, safe and enabling civic space, and to support civil society organisations with adequate, sustainable and transparent funding.

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Article 13 – Freedom of the arts and sciences

The arts and scientific research shall be free of constraint. Academic freedom shall be respected.

Description

Article 13 of the Charter protects three specific types of expression: artistic, scientific, and academic. These are instances of the more general right to freedom of expression. The fact that they are the subject of a separate provision in the Charter shows their importance for contemporary, pluralistic societies. The European Convention on Human Rights (ECHR) does not have an equivalent provision, but the European Court of Human Rights (ECtHR) has ruled that they are covered under the right to free expression guaranteed in Article 10 ECHR. Furthermore, Article 27 of the Universal Declaration of Human Rights and Article 15 of the International Covenant on Economic, Social and Cultural Rights provide that everyone has the right to participate in cultural life, enjoy the arts, and benefit from scientific advancement, while Article 19(2) of the International Covenant on Civil and Political Rights protects the freedom of artistic expression.

The Explanation to Article 13 of the Charter confirms the close link between the rights in Article 13 and general freedom of expression, stating that the former derives from the latter, and from freedom of thought. It also indicates that they ought to be exercised having regard to Article 1 and may be limited. Any such limitations must comply with the conditions set out in Article 52(1) of the Charter and, in line with Article 52(3), may be informed by the criteria developed under Article 10 ECHR, as indicated by the Explanations. Therefore, interpretation of Article 13 of the Charter should consider the principles underlying Article 10 of the Charter on freedom of thought, Article 11 of the Charter on freedom of expression, And article 10 ECHR, as well as the relevant case law.

The mention of Article 1 of the Charter in the Explanation implies that human dignity functions as a limitation on the rights in Article 13. This is particularly relevant for scientific research which may involve humans: it cannot be conducted in a manner which threatens human dignity.

In addition to Articles 1, 10 and 11 of the Charter, Article 13 also relates to the rights guaranteed in Articles 14 (right to education) and 17(2) (intellectual property rights).

The text of Article 11 states that artistic and scientific expression shall be "free", while academic freedom is to be "respected". It is unclear whether this difference in terminology implies that the scope of the respective rights or the level of protection for the relevant type of expression differs.

Case Law

The term "art" in Article 13 should be interpreted broadly to cover all types of artistic creation and expression. The European Court of Human Rights (ECtHR) has ruled that the following come within the scope of Article 10 ECHR: paintings (in Müller and other v Switzerland (C 10737/84)), books (in Karataş v Turkey (23168/94)), films (Otto Preminger Institut v Austria (13470/87)), theatre (Kar and Others v Turkey (58756/00)), caricature (Vereinigung Bildener Kunstler v Austria (68354/01)), and music performance (Mariya Alekhina and Others v Russia (38004/12)). In Pelham (C-476/17), the Court of Justice held that music sampling is a form of artistic creation covered by Article 13 of the Charter.

Likewise, the term "scientific research" is to be read as including research in all sciences by researchers who may work individually or in groups, in a private setting or within an institutional framework. In Hertel v Switzerland (59/1997/843/1049), the ECtHR found that research on the effects of consuming food prepared in microwave ovens conducted by an independent scientist in his private laboratory was within the scope of Article 10 ECHR.

However, scientific research which is incompatible with human dignity will not be protected by Article 13 of the Charter. In Brüstle v Greenpeace (C-34/10), the CJEU interpreted Directive 98/44 on the Legal Protection of Biotechnological Inventions. Referring to the Preamble to the Directive, which states that patent law must be applied in a way which respects human dignity, it held that a scientific process involving human embryonic stem cells that required the destruction of human embryos could not be protected by a patent. The reasoning is narrowly tailored to the facts of the case: the Court did not mention Article 13 of the Charter and stressed that the purpose of the Directive was not to regulate research involving human embryos in general, but only the patentability of biotechnological inventions. Yet, there is an implication that certain types of scientific research may fall outside Article 13 of the Charter altogether.

The second sentence of Article 13 concerns expressive freedom in a specific setting: academia. The ECtHR has interpreted Article 10 ECHR to also protect academic freedom. In Mustafa Erdoğan and Others v Turkey (346/04 and 39779/04), it held that academic freedom includes not only the right to conduct and disseminate academic and scientific research in the strict sense, but also "extends to the academics' freedom to express freely their views and opinions, even if controversial or unpopular, in the areas of their research, professional expertise and competence" (para. 40). In Sorguç v Turkey (17089/03), the ECtHR ruled that academic freedom includes an academic's right to express critical views of the university system itself or the institution in which one works.

In Commission v Hungary (C-66/18), the Court of Justice considered the scope of the right to academic freedom under Article 13 of the Charter. After referring to the case law of the ECtHR and Recommendation 1762 (2006) of the Parliamentary Assembly of the Council of Europe on Academic Freedom and University Autonomy, it stated that academic freedom has two dimensions: firstly, it is a personal right which includes freedom of expression and action, and is exercised by academics; secondly, it has an institutional and organisational dimension which guarantees the autonomy of academic institutions. A national measure which undermines the autonomous organizational structure of a university infringes the institutional aspect of academic freedom and constitutes a violation of Article 13 of the Charter.

Mainstreaming

Article 13 has been relevant for a range of Union policies and legislation in the area of education and research.

Regulation (EU) 2021/817 establishing Erasmus+: the Union Programme for education and training, youth and sport aims to promote the mobility of people in Europe in the fields of education, training, youth, and sport, and lays down rules concerning the structure of the programme, its functioning and funding. A key action under the Regulation is to support learning mobility of students, teachers and staff at all educational levels. Such mobility contributes to the development of knowledge in Europe, fosters social inclusion and promotes the democratic character and values underlying the Union. Thus, the Regulation explains that countries can receive funds under Erasmus+ only if they respect academic freedom as guaranteed by Article 13 of the Charter.

The same approach is followed in Regulation (EU) 2021/695 establishing Horizon Europe – the Framework Programme for Research and Innovation, laying down its rules for participation and dissemination which establishes the Union's programme for research and innovation. The Horizon Programme is the Union's main mechanism for promoting and supporting research and innovation, and for creating a European research area where scientists, researchers and knowledge circulate freely. The Regulation sets out objectives and priorities in relation to scientific research, as well as rules on funding and eligibility criteria for undertakings, research institutions and universities wishing to participate in the Programme. In that context, the Preamble to the Regulation links scientific excellence to academic freedom and provides that the Programme should advance academic freedom in countries which benefit from its funds.

Further, the European Parliament has adopted a European Parliament recommendation on Defence of academic freedom in the EU's external action in the Union's external action. The Recommendation emphasises the importance of academic freedom for the members of academic communities and its connection to core democratic values of equality, accountability, critical and independent thinking, institutional autonomy, and social responsibility. Without the constituent elements of academic freedom, such as thought, expression of opinion, association with others, there can be no open, pluralistic society. Further, the Recommendation notes that academic freedom is under attack in many countries, including, in some in EU Member States. Therefore, the European Parliament calls on the Council and the Commission to incorporate the defence of academic freedom into the action the Union takes in its external relations and make respect for it a criterion for the countries which wish to join the EU.

There are also important developments with regards to academic freedom and fundamental academic values more broadly within the context of the European Higher Education Area – Bologna Process. In the 2020 Rome Ministerial Communique, EHEA Ministers endorsed a definition of academic freedom and in the 2024 Tirana Ministerial Communique the Ministers expressed the view that fundamental academic values include academic freedom but also academic integrity, institutional autonomy, participation of students and staff in higher education governance, public responsibility for higher education and public responsibility of higher education. There is also a dedicated EHEA Working Group on Fundamental Values was mandated with developing a comprehensive framework to enhance the monitoring and implementation of the fundamental values of the European Higher Education Area.

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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.

Description

Article 14 of the Charter entails the right to education, including free compulsory schooling, access to vocational and continuing training, and respect for parental freedom in education.

It is important to note that education remains primarily the responsibility of each Member State and the EU has a limited supporting role in this field, and that Article 14 does not oblige Member States to create or fund particular education systems. Under its Article 52(1), of the Charter, applies only within the scope of EU law. Therefore, it can only apply when national law or policy overlaps with EU rules or obligations.

Nevertheless, Article 14 plays a supporting role in advancing EU integration. It clearly upholds the right to education for all, regardless of legal status and background, reflecting the universal and non-discriminatory nature of this human right. The provision reflects a delicate balance central to EU integration: it protects the freedom of parents to choose their children's education, while respecting the broad discretion of Member States and their considerable flexibility in designing and organising their own systems while fulfilling the right to education. This balance underlines the EU's commitment to respecting national diversity while ensuring that fundamental rights are upheld wherever EU law applies.

Article 14 also contributes to the freedom of movement, especially for students, by supporting access to education and related entitlements such as study grants, maintenance aid, and social benefits in cross-border situations. The Court of Justice of the European Union has developed important case law to ensure that students moving between Member States are not discriminated against in accessing these rights.

Case Law

The Court of Justice of the European Union has considered Article 14 of the Charter in several cases, including:

Françoise Gravier v City of Liège (C293/83) concerned a French student who, contrary to Belgian students, was charged an enrolment fee to study in Liège, Belgium. The Court ruled that access to vocational training is likely to promote freedom of movement of persons. This is why it falls under the Treaty and the Charter. The differential fee policy was unlawful discrimination on grounds of nationality.

In Förster v Hoofddirectie van de Informatie Beheer Groep (C158/07), a German student in the Netherlands applied for Dutch student financial aid. Dutch authorities rejected her application because she had not resided in the Netherlands for five years. The Court ruled that States may require students from other Member States to have resided legally in the host country for a certain period of time before being eligible for student maintenance grants. The ruling balances freedom of movement with protection of national welfare systems.

In IX v WABE eV and MH Müller Handels GmbH v MJ (C804/18 and C341/19), the workplace was a private, nondenominational childcare organisation. Article 14(3) supports the employer's freedom to define a neutral educational environment and uphold parental rights in education. The court found that it must be carefully balanced against employees' freedom of religion (Article 10) and non-discrimination (Article 21). The Charter requires a proportionate, fair balancing of competing fundamental rights.

In Commission v Hungary (C-66/18), Hungary amended its higher education law introducing strict conditions for foreign universities operating in Hungary. This directly affected the Central European University, a US accredited institution operating in Budapest. The court found that Hungary interfered with the right to found and operate educational institutions, which is protected by Article 14(3).

Article 14 of the Charter correlates with Article 2 Protocol 1 (2P1) of the European Convention on Human Rights (ECHR). Relevant cases of the ECtHR include:

In Ponomaryovi v Bulgaria (5335/05), two migrant children without permanent residence permit were required to pay fees to access secondary education. The Court found that charging for secondary education was discriminatory and disproportionate, marking a key case for the rights of migrants and equal access to education.

In Kjeldsen, Busk Madsen and Pedersen (5095/71; 5920/72; 5926/72), parents objected to mandatory sex education in Danish public schools, claiming it violated their parental philosophical convictions. The Court held that states may provide such education as long as it is objective and pluralistic, reaffirming the limited but protected role of parental convictions in education.

Mainstreaming

Council Recommendation 2019/C 189/02 on high quality early childhood education and care system promotes high-quality, inclusive early childhood education as a foundation for lifelong learning and equal opportunities. It emphasises universal access, affordability, qualified staff, child-centred curricula, and quality monitoring. while respecting Member States' competence over education systems.

Directive (EU) 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings reinforces Article 14 by guaranteeing those deprived of liberty their right to education and training, including where the children have physical, sensory or learning disabilities.

Directive 2013/33/EU laying down standards for the reception of applicants for international protection ensures access to the education system under similar conditions as their own nationals for so long as an expulsion measure against them or their parents is not actually enforced. The education may be provided in accommodation centres. In this way, the directive underscores that the right to education applies regardless of legal status under migration law.

Council Recommendation 2013/C 378/01 on effective Roma integration measures in the Member States plays a critical role in advancing Article 14 by promoting inclusive, non-discriminatory, and quality education for Roma. It addresses structural barriers such as segregation, early dropout, and lack of early education. It encourages systemic reforms that align national education systems with EU fundamental rights obligations.

The European Social Fund supports vocational and educational training with reference to Article 14. The specific objectives include promoting equal access to and completion of quality and inclusive education and training. The aim is to support disadvantaged groups including persons with disabilities.

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UNESCO The rights to Education

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.

Description

There are three elements to the freedom to choose an occupation and engage in work under Article 15.

The first paragraph highlights the fundamental right to engage in work as well as the right to freely choose or accept an occupation. While this encompasses the freedom to pursue one's chosen occupation, it importantly does not confer any general right to obtain work or an obligation for the state to provide employment. It broadly reflects the right to work under Article 1 of the Revised European Social Charter, and in particular Article 1(2), which outlines the right of workers to earn a living in an occupation freely entered upon.

The second paragraph of Article 15 applies this right specifically to the situation of EU citizens engaging in cross-border activities, reflecting three fundamental freedoms protected under Articles 26, 45, 49 and 56 of the Treaty on the Functioning of the European Union (TFEU), namely the freedom of movement for workers, the freedom of establishment and the freedom to provide services. By virtue of Article 52(2) of the Charter, this right must be exercised under the conditions and within the limits defined by the TFEU.

The third and final paragraph provides that third country nationals who are legally authorised to work in the territories of the Member States are entitled to the same working conditions as EU citizens.

The freedom to choose an occupation and the right to engage in work are not absolute. They can be limited in the manner described under Article 52(1) of the Charter – that is, as provided for by law and in a manner that ensures the essence or core of the right is protected. Any limitation must also be necessary and must genuinely meet the objectives of general interest recognised by the EU, or the need to protect the rights and freedoms of others.

The right to work under Article 15 is closely related to, and in many ways overlaps with, the freedom to conduct a business under Article 16 of the Charter. Together, these two Articles encompass the freedom to pursue one's chosen trade or profession.

Case Law

The Court of Justice for the European Union has considered Article 15 of the Charter in several cases, including:

In Fuchs and Köhler v Land Hessen (C-159/10 and C-160/10), the Court noted that the prohibition of discrimination in employment on the grounds of age must be read in light of the fundamental right to work under Article 15, in recognition of the importance of diversity in the workforce and the realisation of the potential and quality of life of all workers. However, the Court found that a law providing for the compulsory retirement of civil servants at the age of 65 does not contravene the prohibition of discrimination, provided it had the aim of promoting a balanced age structure in the workforce.

In PI v Landespolizeidirektion Tirol (C-230/18), the Court held that Austrian legislation which permitted authorities to immediately close down a commercial enterprise for the purpose of avoiding risks of prostitution without providing a statement of reasons was contrary to the freedom of establishment for the purposes of Article 49 TFEU and entailed a limitation on the exercise of the freedom of establishment and the freedom to conduct a business, respectively enshrined in Article 15(2) and Article 16 of the Charter.

In NH v Associazione Avvocatura per i diritti LGBTI (C-507/18), the Grand Chamber held that a statement made by a lawyer during a radio interview to the effect that the speaker would never recruit persons of a certain sexual orientation for his law firm was contrary to the prohibition of discrimination in employment, as broadly protected under, among other provisions, Article 15 of the Charter. The corresponding limitation on the speaker's freedom of expression was found to be proportionate.

Several cases pre-dating the adoption of the Charter are also relevant to the substance of Article 15 of the Charter, including:

In Nold v Commission of the European Communities (C-4/73), the Court first acknowledged the existence of the freedom to exercise an economic or commercial activity under EU law.

In Hauer v Land Rheinland-Pfalz (C-44/79), the Court recognised that the fundamental freedom to pursue an occupation could be limited, provided that the principle of proportionality was observed.

In Staatsanwalt Freiburg v Keller (C-234/85), the Court upheld the validity of EU legislation imposing terminology restrictions for labels of table wines, finding that the relevant limitation of the freedom to pursue one's trade was justified by the general objectives pursued by the common organization of the wine market.

In Collins v Secretary of State for Work and Pensions (C-138/02), the Court held that EU citizens are entitled to equal treatment with nationals of host Member States, not only in terms of access to work, but also in relation to social and tax advantages associated with work.

Mainstreaming

Directive 2004/38/EC of the European Parliament and of the Council of 29 April 2004 on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States lays down the conditions governing the exercise of the right of free movement and residence within the territory of the Member States by Union citizens and their family members, as well as permissible limits on that right, an essential precondition to realizing the right to freedom of movement of workers under Article 15(2) of the Charter.

Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers requires that third-country nationals entering the Union as seasonal workers be entitled to equal treatment with nationals of the host Member State at least with regards to terms of employment and working conditions, as well as collective rights, social security and tax benefits.

Directive 2014/54/EU of the European Parliament and of the Council of 16 April 2014 on measures facilitating the exercise of rights conferred on workers in the context of freedom of movement for workers affirms the right of freedom of movement of workers within the EU without discrimination, reflecting both Article 15(2) of the Charter and Article 45 of the TFEU.

Impact assessment initiative to partially revise Regulation (EC) No 883/2004 of the European Parliament and of the Council on the coordination of social security systems - SWD/2016/0460 final concerned a proposal for the coordination of social security systems which aimed to achieve a modernised system of social security coordination that responds to the social and economic reality in the Member States. It was stated that all options would facilitate the exercise of the right to engage in work in another Member State by clarifying the provisions on the aggregation of unemployment benefits, and thereby support the operationalising of Article 15(2) of the Charter.

Impact assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law and Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions – SWD/2018/141 final found that the main objective of both proposals was to facilitate the rights of establishment, and the proposed package would therefore have a positive impact on the right to work under Article 15 of the Charter.

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Article 16 – Freedom to conduct a business

The freedom to conduct a business in accordance with Community law and national laws and practices is recognised.

Description

Article 16 of the Charter of Fundamental Rights protects the freedom of self-employed individuals and legal persons to engage in economic activities. The Court of Justice of the EU (CJEU) has clarified that this freedom includes the ability of businesses to freely use their economic, technical, and financial resources.

Key elements of Article 16 include: the freedom to choose a business activity; the freedom to pursue and exercise an economic activity; freedom of contract; and the principle of free competition.

The freedom to conduct a business also interacts closely with other Charter rights and provisions in the Treaty on the Functioning of the EU (TFEU). It must be balanced against social and environmental objectives protected elsewhere in EU law, such as the right to property (Article 17 of the Charter), the protection of workers (Articles 30 and 31 of the Charter), and consumer and environmental protection (Articles 12 and 37 of the Charter). Moreover, Article 16 operates within the framework of the internal market freedoms guaranteed by the TFEU, particularly the free movement of goods, services, capital, and establishment.

So, the freedom to conduct a business is not absolute. It can be lawfully limited, provided the restriction meets the requirements of Article 52 of the Charter, the general limitation clause.

Case Law

The Court of Justice of the EU has considered Article 16 in a number of cases, including:

In Alemo-Herron (C-426/11), the Court held that although 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 safeguards employees' rights, this must be balanced with the transferee's freedom to conduct a business under Article 16 of the Charter. Since the private employer could not participate in the collective bargaining process, binding it to future agreements would undermine its contractual freedom and the essence of its business freedom. Therefore, Article 3 of Directive 2001/23 precludes Member States from imposing such dynamic clauses on a transferee in these circumstances.

The Sky Osterreich case (C-283/11) concerned whether Sky had to grant the Austrian public broadcasting service the right to transmit short news reports without receiving compensation. The ECJ confirmed the validity of Article 15(6) of the Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services, holding that broadcasters with exclusive rights may only claim compensation limited to technical costs. The Court stressed that the freedom to conduct a business is not absolute but must be seen in light of its social function. In this case, the restriction was justified by the public interest in guaranteeing access to information and promoting media pluralism. The Court concluded that the Directive struck a fair balance in this regard.

In JK v TP S.A (C-356/21), a Polish court asked whether EU anti-discrimination law covers a situation where a public television broadcaster cancels shifts and stops giving new contracts to a self-employed media worker who posted social media content supporting same-sex couples. The ECJ held that refusing to conclude or renew a contract because of sexual orientation counts as discrimination in "access to self-employment" under the Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation. The Court recalled the core elements of freedom to conduct a business, and added that one of such elements—freedom of contract—cannot justify such discrimination, since the freedom to conduct a business is not absolute and must respect its social function.

In Nordic Info BV v Belgische Staat (C-128/22), a Belgian travel agency challenged Belgium's COVID-19 rules that temporarily banned non-essential travel to "red zone" countries and required testing and quarantine on return. The Court recognised that these rules limited the freedom to conduct a business under Article 16 of the Charter because companies like Nordic Info were limited in their ability to sell leisure trips. However, Article 16 is not absolute: limits are allowed if they are proportionate, meaning suitable, strictly necessary, and not excessive in light of the aim of protecting public health. The Court found that a temporary ban on non-essential travel to high-risk countries, although harmful to travel agencies, could be justified given the seriousness of the pandemic and the need to prevent the uncontrolled spread of COVID-19. Therefore, the objective of general interest of protecting public health prevailed over the freedom to conduct business.

Mainstreaming

Regulation (EU) 2024/1083 establishing a common framework for media services in the internal market, which sets out a common framework for media services within the internal market, prevents Member States from obliging media service providers to reveal their journalistic sources or punishing them for refusing to do so, thereby promoting Article 16 of the Charter. However, it also explicitly allows for exceptions. Such limitations are permitted if they are laid down in EU or national law, comply with Article 52(1) of the Charter, serve an overriding public interest, are proportionate, and are authorised in advance by a court or by an independent and impartial authority.

Directive 2011/95/EU 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, which sets out uniform criteria for recognising and protecting refugees and stateless individuals, also provides protection for freedom to conduct a business provided for by Article 16 of the Charter. Under Article 26 of this Directive, Member States must permit individuals granted refugee or subsidiary protection status to engage in self-employment as soon as that status is conferred.

Directive 2014/59/EU establishing a framework for the recovery and resolution of credit institutions and investment firms, which sets out rules for the recovery and resolution of credit institutions and investment firms, also mentions Article 16 of the Charter in its preamble. This Directive includes provisions that may restrict the freedom to conduct a business. Specifically, it authorises regulators to require these institutions to correct shortcomings in their recovery plans. While the preamble acknowledges that such measures can impact economic freedom, it justifies them as essential for ensuring financial stability. The aim is to reinforce the soundness of institutions and prevent them from becoming overly large or taking excessive risks. These restrictions apply only to institutions deemed to be failing or at risk of failure, and are considered proportionate, as they allow for targeted preventive measures to correct identified problems.

National constitutions also frequently protect the freedom to conduct a business. These constitutions provide protections for "freedom of enterprise" (Spain), "free economic initiative" (Slovenia), and "the right to engage in enterprise and pursue other economic activity" (Czechia) for instance.

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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.

Description

Article 17 of the EU Charter guarantees the right to property and includes both physical and intellectual property. The Court of Justice of the EU (CJEU) recognises this right as a general principle of EU law, closely aligned with Article 1 of Protocol 1 of the European Convention on Human Rights (ECHR).

The first paragraph of Article 17 consists of three parts. The first part protects the peaceful enjoyment of possessions, which the CJEU interprets broadly to include tangible assets (land, buildings), intangible assets (company shares, financial claims), intellectual property, pension rights, and certain contractual rights. To qualify as a "possession," a right or asset must have economic value and create an established legal position, allowing the holder to exercise control and derive benefit.

The second part covers deprivation of property, which is only lawful if:

1. Provided for by law,
2. Pursues a legitimate public interest, and
3. Includes fair and timely compensation.

The third part allows the regulation of property use in pursuit of the general interest. Such regulation (e.g., planning laws, licensing, environmental protection) must strike a fair balance between the interests of the community and the individual, and in some cases, compensation may be required. The CJEU also stresses the social function of property, meaning ownership carries responsibilities towards society.

Intellectual property rights are explicitly protected and must be balanced against other rights, notably freedom of expression (Article 11) and freedom to conduct a business (Article 16). Measures restricting intellectual property or its use must be proportionate, avoiding excessive interference.

Case Law

The Court of Justice of the European Union has considered Article 17 in a number of cases, including:

In Nold v Commission of the European Communities (C-4/73), the Court first recognised the right to property and clarified that it encompasses the protection of one's economic activities and investments. The case arose because J. Nold challenged a Commission decision that restricted its ability to buy coal directly, claiming this harmed its business and property rights. However, the Court noted that the exercise of property rights is not absolute and can be subject to limitations when justified by public interests. The Court held that EU law requires any national or EU measures that restrict the exercise of property rights, such as trade restrictions, to be proportionate and grounded in legitimate public objectives. In this case, the Court upheld the European Commission’s decision, finding that the restrictions on Nold's right to direct coal supply were justified by the need to stabilise the coal market and were not disproportionate.

In Hauer v Land Rheinland-Pfalz (C-44/79), the Court ruled that the applicant’s right to property, specifically her right to grow vines on her property, could be limited under certain conditions. The prohibition of new plantings under Council Regulation No. 1162/76, which was designed to address surplus wine production affected the exercise of the right to property, however, the Court viewed it as necessary to correct market imbalances and could not be challenged on grounds of violating the right to property, as long as it adhered to proportionality and the public interest.

In Commission v Hungary (C-235/17), the Court ruled that Hungarian laws, which removed the right to use agricultural and forestry land without compensation, violated EU property rights protections. The law applied to both legal persons and individuals without close family ties to the landowner. The Court held that such legislation, which effectively deprived individuals of their property, must provide clear and precise conditions for compensation.

In Funke Medien NRW v Germany (C-469/17), the Court ruled on the right to property in relation to intellectual property. The case involved Funke Medien's publication of "classified for restricted access" documents, which were drafted by the German government. The Court ruled that while freedom of expression and the right to access information are fundamental rights, these must be carefully balanced with the protection of copyright and other legitimate interests, such as national security.

Mainstreaming

Directive (EU) 2015/2436 of the European Parliament and of the Council of 16 December 2015 to approximate the laws of the Member States relating to trademarks standardises the laws of Member States regarding trademarks. It establishes that a trademark may consist of various signs, including personal names, designs, and sounds. The Directive safeguards property rights by granting trademark owners exclusive rights to prevent unauthorized use of their trademark, aligning with the right to property under both the Charter and ECHR.

Regulation (EU) 2017/1001 of the European Parliament and of the Council of 14 June 2017 on the European Union trademark establishes the EU trademark system, ensuring trademarks have a unitary character across all EU Member States. It provides businesses with clear protection of their intellectual property rights throughout the Union. The Regulation safeguards property rights by protecting trademarks and ensuring they are used fairly and in accordance with legal standards.

Directive 2014/42/EU of the European Parliament and of the Council of 3 April 2014 on the freezing and confiscation of instrumentalities and proceeds of crime in the European Union addresses the freezing and confiscation of proceeds from crime in the EU. It limits the right to property through freezing orders but ensures that these measures are maintained only as long as necessary. It highlights the need for court reviews to ensure proportionality and necessity, safeguarding property rights in the context of criminal justice.

Regulation (EU) No 608/2013 of the European Parliament and of the Council of 12 June 2013 concerning customs enforcement of intellectual property rights and repealing Council Regulation (EC) No 1383/2003 deals with customs enforcement of intellectual property rights. It enables various stakeholders, such as right-holders and producer groups, to initiate proceedings regarding intellectual property infringements. It ensures the protection of intellectual property as a form of property, allowing stakeholders to uphold their rights across the EU.

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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.

Description

Article 18 of the Charter makes reference to the 1951 Geneva Refugee Convention, restating the obligations stemming from international law, as well as the Treaty on European Union and the Treaty on the Functioning of the European Union (hereinafter referred to as "the Treaties").

The Geneva Convention is dedicated to the protection of the persecuted individuals, unable to return to the state of their nationality of habitual residence, and thus finding themselves in need of protection abroad. Inasmuch as the individuals in need of protection flee their countries of origin or habitual residence due to persecution on the grounds enumerated in the Convention, they are considered refugees. On this basis, asylum status is designed to offer lasting protection and is regulated in secondary EU law.

The European Convention on Human Rights (ECHR) establishes the principle of *non-refoulement* which amounts to a prohibition of sending anyone away to a country where that person could be subjected to persecution, torture or inhumane and degrading treatment, as established in Article 3 ECHR. Non-refoulement is thus a prism through which to approach Article 18 of the Charter, connecting it to Article 19 of the Charter, which zooms in more specifically on this principle.

Article 18 of the Charter has been implemented both at Member State and EU level through various legislation and policy measures. It has also been extensively considered and interpreted by the Court of Justice of the EU.

Case Law

The Court of Justice of the EU has considered Article 18 in a number of cases, including:

In **N.S.** (C-411/10), in the context of the operation of the EU asylum system, the Court established that it is prohibited to return an asylum seeker to a Member State where there is a real risk that he or she will be subjected to inhuman or degrading treatment because of systemic deficiencies in that country's asylum system.

In **Commission v Hungary (C-808/18)**, the CJEU applied the same rationale to the general requirement of *non-refoulement*, by establishing that sending asylum seekers away to places where they could face torture and inhuman and degrading treatment is not an option. The Court also established a duty to properly register asylum seekers arriving in Member States' territory.

In joined cases **Slovakia and Hungary v Council (C-643/15 and 647/15)**, the Court established that Member States cannot rely on arbitrary conditions not to comply with the requirements of sharing responsibilities under the EU asylum system, which could include accepting refugees, who entered the Union via other Member States. Obstructing relocation of asylum seekers between the Member States could have negative implications on the proper exercise of Article 18 of the Charter.

In **Jawo** (C-163/17) and **Ibrahim** (C-297/17), the Court prohibited exposing an asylum seeker to conditions of extreme material poverty as constituting inhuman or degrading treatment and violating Article 4 of the Charter.

Mainstreaming

The following instruments are important in the context of implementing Article 18:

Regulation (EU) 2024/1351 on asylum and migration management, or the "Asylum and Migration Management Regulation", establishes a common framework for managing asylum and migration across the EU through a mandatory solidarity system between Member States, which involves sharing the responsibility for asylum seekers. This can include relocating asylum seekers or providing financial contributions and capacity-building support. It sets out clear criteria for determining which Member State is responsible for examining an asylum application, often based on the country of first entry.

Directive (EU) 2024/1346 laying down standards for the reception of applicants for international protection, or the "Reception Conditions Directive", establishes minimum standards for the reception of applicants for international protection across the EU. Its main aim is to harmonize reception conditions, ensuring adequate living standards for asylum seekers, while also providing more flexibility for Member States in managing reception systems. It seeks to create more uniform and adequate standards for housing, food, and healthcare for asylum seekers throughout the EU.

Regulation (EU) 2024/1347 establishes common EU standards for identifying persons in need of international protection and for defining the content of that protection. It sets out criteria for granting refugee status or subsidiary protection. As a regulation, it is directly applicable in all EU Member States and aims to promote more consistent application of protection standards across the Union.

The "Recast Eurodac Regulation" (Regulation (EU) 2024/1358 on the establishment of "Eurodac" for the comparison of biometric data in order to effectively apply Regulations (EU) 2024/1351 and (EU) 2024/1350 of the European Parliament and of the Council and Council Directive 2001/55/EC and to identify illegally staying third-country nationals and stateless persons and on requests for the comparison with Eurodac data by Member States' law enforcement authorities and Europol for law enforcement purposes) establishes a system for comparing biometric data to support the EU's asylum and migration policies. It allows for the storage of facial images and alphanumeric data, lowering the age for fingerprinting and facial recognition to 6 years old for minors. It also permits law enforcement authorities to search the Eurodac database for law enforcement purposes, with specific conditions for a "security flag".

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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.

Description

Article 19 of the Charter prohibits collective expulsions and forbids sending any person to a state where they face a serious risk of the death penalty, torture, or inhuman treatment. There is an overlap between this provision and Article 18 of the Charter, which contains the general non-refoulement obligation.

Crucially, both guarantees under Article 19 are *absolute* rights, which know no limitations. Similarly, Article 4, Protocol 4 of the European Convention on Human Rights (ECHR) and Article 4 of the Charter, on which the two guarantees draw, know no limitations either.

Collective expulsions have consistently been interpreted by the European Court of Human Rights (ECtHR) as a failure by the authorities to give a full, individual and honest assessment of each asylum or protection claim. The purview of the provision is not limited to the territories of the Member States of the EU and extends elsewhere when effective control over the persons concerned has been held by the Member State authorities.

Case Law

The European Court of Human Rights has issued a number of rulings which inform the interpretation of Article 19 of the Charter, including:

In **ND and NT v Spain** (8675/15 and 8697/15), the European Court of Human Rights held that the immediate removal of a large number of individuals attempting to cross border fences illegally does not constitute a mass expulsion where it would have been possible for them to request asylum or protection through official channels.

In **Hirsi Jamaa and others v Italy** (27765/09), the ECtHR found that pushbacks on the high seas constitute collective expulsion in violation of the European Convention on Human Rights. The guarantees of the principle of non-refoulement under the ECHR apply not only within the territory of States but also on the high seas when a Council of Europe state exercises control.

In **Čonka v Belgium** (51564/99), the ECtHR emphasized that the absence of individual assessment is a key indicator of collective expulsion. Collective expulsion occurs when individuals are not given the opportunity to present their specific cases to the authorities or to have the relevant facts considered in a reasonable and objective manner.

In **Georgia v Russia (I)** (13255/07), the ECtHR clarified that collective expulsion includes any measure compelling foreign nationals, as a group, to leave a country, except when such a measure is taken following a reasonable and objective examination of the individual circumstances of each person in the group.

In a *A.R.E v Greece* from *2025* the ECtHR found a violation of Article 3 ECHR due to the applicant's removal without an adequate assessment of the risk of ill-treatment. The Court emphasised that individuals must have access to effective procedures capable of evaluating such risks prior to any return, including in border contexts. The judgment illustrates how Article 3 safeguards apply in practice to removal and return situations.

Mainstreaming

Directive 2008/115/EC on common standards and procedures in Member States for returning illegally staying third-country nationals establishes common standards and procedures for returning third-country nationals who are staying illegally in EU Member States. It aims to ensure returns are conducted effectively, humanely, and with full respect for fundamental rights and dignity, using a framework that includes return decisions, entry bans, and the possibility of detention, while also providing legal safeguards that would ensure compliance with Article 19 of the Charter.

Regulation (EU) 2024/1347 establishes common EU standards for identifying persons in need of international protection and for defining the content of that protection. It sets out criteria for granting refugee status or subsidiary protection. Article 21 of this regulation stipulates that the principle of non-refoulement shall be respected in accordance with Union and international law.

Regulation (EU) 2024/1359 addressing situations of crisis and force majeure in the field of migration and asylum addresses situations of force majeure in migration and asylum, establishing a legal framework for the so called "instrumentalization" of migrants. It provides temporary measures and allows for derogations from other EU asylum and migration regulations to help Member States in crisis.

Regulation (EU) 2019/1896 on the European Border and Coast Guard establishes a new, strengthened, European Border and Coast Guard (EBCG) to manage the EU's external borders and enhance border security by providing the European Border and Coast Guard Agency (Frontex) with increased powers, a standing corps of uniformed officers, and a mandate to improve migration management and the EU's return policy, all while fully respecting fundamental rights.

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EQUALITY

Article 20 – Equality before the law

Everyone is equal before the law.

Description

Article 20 of the Charter of Fundamental Rights concerns equality before the law. It is just one sentence long and simply states that "everyone is equal before the law." This principle reflects a core legal value found in the constitutions of all EU Member States.

The Court of Justice has affirmed this principle as a fundamental aspect of EU law. It explained that similar cases must be treated in a similar manner, and different cases must be treated differently — unless there is an objective reason for doing otherwise.

It should be noted that Article 20 of the Charter lays down the general principle of equality before the law. Article 21 of the Charter specifies this principle in the form of an explicit prohibition of discrimination based on certain grounds. Equality reflects the overarching rule that individuals should not be treated differently without objective and reasonable justification, and non-discrimination is a particular expression of that principle applied to specific characteristics.

Case Law

The Court of Justice of the EU has considered Article 20 in a number of cases, including:

Guardian Industries v European Commission (C-580/12 P) *and* Verloet v Ministerraad (C-76/15) are examples of the Court initially seeming to blur the line between Article 20 on equality before the law and Article 21 on non-discrimination by treating them as if they conveyed the same meaning.

However, in Glatzel v Freistaat Bayern (C-356/12), the Court made a clear distinction between the two. It reiterated that Article 20 is specifically aimed at ensuring that people in similar situations are not treated differently without justification. Mr. Glatzel had challenged a decision denying him a driving license due to vision issues. The Court found that his circumstances were not comparable to those of other drivers, so the different treatment was justified. This case also confirmed that Article 20 can be relied on directly in national courts against state bodies—a concept known as vertical direct effect.

In Milkova (C-406/15), by contrast, the Court identified a breach of Article 20 of the Charter. They found that national law that treated civil servants with disabilities differently from other employees with the same disabilities to be unjustified.

The validity of certain EU legislation has also been assessed by the Court from the perspective of its compliance with equal treatment in X v Belgian State (C-930/19). The referred question was whether a provision of the Citizen's Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States amending Regulation (EEC) was in violation of Article 20 of the Charter, in that it provided for a residence regime different from that provided for in Council Directive 2003/86/EC on the right to family reunification. Specifically, different residence rights applied to third-country national spouses of EU citizens as compared to third-country nationals' spouses of third-country nationals when they have been victims of domestic violence by their spouses. The Court of Justice (in case C-930/19) found the victims to be in different situations and so for there to be no breach of Article 20. This was on the grounds that the two directives pursue different aims and operate in distinct legal contexts. The Citizen's Directive concerns free movement and grants derived residence rights linked to the Union citizen's status. The Family Reunification Directive belongs to immigration policy and provides autonomous rights based on family reunification. Member States also have limited discretion under the former but broad discretion under the latter. It therefore held that there was no violation of Article 20.

Mainstreaming

A practical example of how policymakers uphold Article 20 of the Charter on equality before the law can be seen in in Regulation 650/2012 on jurisdiction, applicable law, recognition and enforcement of decisions and acceptance and enforcement of authentic instruments in matters of succession and on the creation of a European Certificate of Succession. This Regulation introduced the European Certificate of Inheritance, intended to streamline procedures and legal instruments in cross-border inheritance matters. Its broader goal was to establish a unified civil justice area across the EU in the context of inheritance law. The assessment concluded that the proposed Regulation would enhance equality before the law, as it would apply uniform rules across the Union, preventing jurisdiction shopping—where parties try to bring a case in the country most likely to deliver a favourable ruling. No negative effects on fundamental rights were identified.

Similarly, in Directive 2023/2413 as regards the promotion of energy from renewable sources the European Commission evaluated the proposal's implications for equality before the law as protected by Article 20 of the Charter. The proposal sought to promote the development and use of renewable energy sources to support the EU's climate goals. Like the Succession Regulation, the proposal was also found to positively affect equality before the law, as it included measures to level the playing field between individuals or small entities using renewable electricity and larger market players. Moreover, the Directive aimed to promote fair treatment among suppliers involved in public procurement.

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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.

Description

Article 21 of the Charter enshrines the prohibition of discrimination and represents one of the Union's core values and a general principle of EU law. From the start, equality has been central to European integration, and Article 21 reflects this through its two distinct paragraphs.

The first paragraph is the traditional anti-discrimination clause, covering a wide and open-ended list of grounds, such as sex, race, colour, ethnic or social origin, genetic features, language, religion or belief, political or any other opinion, membership of a national minority, property, birth, disability, age or sexual orientation. It mirrors to some extent Article 14 of the European Convention on Human Rights (ECHR). Unlike Article 19 of the Treaty on the Functioning of the European Union (TFEU), which grants the EU legislative competence to combat discrimination on a closed list of grounds (sex, racial or ethnic origin, religion or belief, disability, age, and sexual orientation) Article 21 of the Charter does not itself confer a competence to enact anti-discrimination laws. Its nature and scope are different. Instead, it binds both the EU institutions and the Member States when they are implementing EU law. In doing so, Article 21(1) complements the prohibition of discrimination in addition to the existing anti-discrimination directives (see section "Mainstreaming"), as it covers a wider range of protected grounds and applies in areas beyond the directives' reach. The Court of Justice has confirmed that Article 21 of the Charter has horizontal direct effect, meaning it can be invoked in disputes between private parties. Article 21 of the Charter is not absolute, however: whether a difference in treatment amounts to direct or indirect discrimination, such limitation needs to comply with Article 52(1) of the Charter requirements, including the compliance with principle of proportionality and necessity of the national measures restricting Article 21 of the Charter.

The second paragraph of Article 21 of the Charter is embedded in the European context and corresponds to Article 18 TFEU: it prohibits discrimination on grounds of nationality. However, its scope is limited to situations where EU citizens are treated less favourably than nationals of another Member State and does not provide protection for third-country nationals.

Case Law

The Court of Justice of the EU has considered Article 21 in a number of cases, including:

In Association Belge des Consommateurs Test-Achats ASBL and Others (C-236/09), the Court, applying Articles 21 and 23 of the Charter, reaffirmed that comparable situations must not be treated differently and different situations must not be treated alike unless objectively justified, and invalidated the provision of Directive 2004/113/EC allowing Member States to maintain gender-based differences in insurance premiums and benefits.

In Léger (C-528/13), the Court held that the permanent exclusion of men who have had sexual relations with other men from blood donation may constitute discrimination on grounds of sexual orientation under Article 21(1) of the Charter, which can be justified only if proportionate and necessary to ensure a high level of health protection.

In CHEZ Razpredelenie Bulgaria (C-83/14), the Court held that protection against discrimination covers not only persons who actually possess the protected characteristic but also those who are perceived by the author of the discrimination as possessing it.

In Parris (C-443/15), the Court held that Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation does not recognise a new category of discrimination based on the combination of protected grounds—such as age and sexual orientation—when discrimination on each ground separately has not been established. Accordingly, the pension rule at issue did not amount to unlawful discrimination.

In Egenberger (C-414/16), the Court found that employees or potential employees are protected not only against discrimination by State or public authorities, but also against discriminatory practices by private employers, confirming the horizontal direct effect of the rights in Article 21 of the Charter.

Mainstreaming

Council Directive 2000/43/EC implementing the principle of equal treatment between persons irrespective of racial or ethnic origin implements the principle of equal treatment irrespective of racial or ethnic origin and gives legislative effect to the prohibition of discrimination reflected in Article 21 of the Charter.

Council Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation establishes a general framework for equal treatment in employment and occupation, prohibiting discrimination on grounds such as religion or belief, disability, age or sexual orientation in line with Article 21.

Council Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services implements the principle of equal treatment between men and women in access to and supply of goods and services, reflecting the prohibition of discrimination under Article 21.

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 consolidates EU rules on equal opportunities and equal treatment of men and women in employment and occupation, thereby operationalising the prohibition of sex discrimination under Article 21.

Directive (EU) 2019/1158 on work-life balance for parents and carers promotes equality between men and women in the labour market through rights relating to parental leave, carers' leave and flexible working arrangements, contributing to the implementation of the principle of non-discrimination under Article 21.

Directive (EU) 2023/970 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms strengthens the application of the principle of equal pay between men and women and enhances enforcement of gender equality in employment, reflecting the prohibition of discrimination under Article 21.

Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data contributes to the protection against discrimination by restricting the processing of special categories of personal data revealing characteristics such as racial or ethnic origin, religion, health or sexual orientation.

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Article 22 – Cultural, religious and linguistic diversity

The Union shall respect cultural, religious and linguistic diversity.

Description

Article 22 of the EU Charter highlights the Union's obligation to respect cultural, religious, and linguistic diversity. Respect for diversity is a key value of the EU, summed up in the motto "United in diversity". Respect for diversity is supported not only by Article 22 of the Charter, but also by other key Treaty provisions. In the Treaty on European Union, Articles 2 and 3 refer to the rich cultural and linguistic diversity of the Union as the founding values and objectives of the Union's activities etc. The Treaty on the Functioning of the European Union, Article 167 sets out the duty of respect for the national identities of the Member States. However, the concept of "diversity" is broad and sometimes vague. It includes differences between countries as well as within regions and immigrant communities, making its application complex and occasionally politically sensitive.

Article 22 requires the EU to respect diversity rather than to actively promote it. This is a more limited obligation compared to other Charter rights. However, Article 51 requires the EU to "respect the rights, observe the principles and promote the application" of all Charter rights, thereby suggesting a potentially more proactive role for the Union.

Article 22 covers three main areas: cultural diversity, religious diversity, and linguistic diversity. Cultural diversity is broadly defined to include arts, literature, music, lifestyles, values, and beliefs — both tangible and intangible cultural expressions. Regarding religious diversity, the EU acknowledges it and respects how each Member State manages religious matters, while individual religious freedoms are safeguarded in other parts of the Charter, such as Article 10 on freedom of thought, conscience and religion. Linguistic diversity is central to the EU, with rights to communicate with EU institutions in official languages guaranteed to both EU citizens and non-EU nationals.

Article 22 works alongside other Charter rights like freedom of thought and religion (Article 10), the right to education (Article 14), protection from discrimination (Article 21), and the right to good administration (Article 41). Together, these provisions create a framework that supports Europe's rich and varied cultural landscape while respecting national identities and individual rights.

Case Law

Although relatively few court judgments mention Article 22 of the Charter, the case law covers a wide range of cultural, linguistic, and religious differences both between and within Member States. Most cases before the Court concern issues of free movement or non-discrimination, with Member States invoking Article 22 to justify certain limitations.

In Anton Las *(C-202/11)*, the Court ruled that a law requiring all cross-border employment contracts to be written in Dutch - although it was aimed at promoting linguistic diversity in a Dutch-speaking region of Belgium - placed unfair restrictions on the free movement of workers.

In Malgožata Runevič-Vardyn (C-391/09), the Court found that a rule requiring names in civil status records to follow national spelling serves a legitimate aim and may justify certain limitations on the free movement of persons.

In Anita Groener v Minister for Education (C-379/87), the requirement for a school lecturer to know the Irish language - despite the role being carried out in English - was considered legitimate based on the aim of protecting Irish national identity.

In Commission of the European Communities v Grand Duchy of Luxemburg (C-473/93), the Court found that a rule allowing only Luxembourg nationals to teach, aimed at protecting national identity, imposed a disproportionate restriction on the free movement of persons.

A group of Court rulings on workplace religious discrimination, notably over Islamic headscarves, rely on Articles 21 and 10 rather than Article 22. However, as Advocate General Kokott stated (in *Samira Achbita)*, the issue is how much difference and diversity an open and pluralistic European society must tolerate within its borders, and how much assimilation it may require.

In Samira Achbita (C-157/15), the Court decided that workplace rules that ban employees from wearing visible political, philosophical, or religious symbols—such as the Islamic headscarf—can amount to indirect discrimination.

In Asma Bougnaoui and Association de défense des droits de l'homme (ADDH) v Micropole SA (C-188/15), dismissal of an employee to accommodate a customer's request not to be served by someone wearing an Islamic headscarf was found to be discriminatory.

In IX and MH Müller Handels GmbH (Joined C-804/18 and C-341/19), the Court concluded that an internal company rule - intended to promote a policy of neutrality - banning the wearing of large-sized political, philosophical, or religious symbols in the workplace may amount to direct discrimination based on religion or belief.

In *L.F. v SCRL* (C-344/20), it was established that a company policy that prohibits employees from expressing their religious or philosophical beliefs—whether through speech, clothing, or other means—does not constitute direct discrimination on the grounds of religion or belief, to the extent that it is applied consistently and without distinction to all employees.

Commune d'Ans (C-148/22), (A municipal authority may justify a general ban on visible religious or philosophical symbols at work if it seeks to ensure a neutral administrative environment, provided the rule is appropriate, necessary, and proportionate to that goal).

In Centraal Israëlitisch Consistorie van België e.a. and Others (C-336/19), the Court ruled that although national rules requiring animals to be stunned before ritual slaughter limit the right to manifest religion (Article 10 Charter), the regulation in question did *not* disregard the cultural, religious and linguistic diversity guaranteed by Article 22 of the Charter — thus acknowledging diversity but only as a contextual provision, not the primary basis for the decision.

Mainstreaming

Regulation 2024/1083 establishing a common framework for media services in the internal market establishes a common framework for media services in the internal market. It requires Member States to ensure a pluralistic media environment, in line with the EU Charter, particularly the right to freedom of expression and information in Article 11, and the right to cultural, religious, and linguistic diversity in Article 22.

Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services and Directive 2018/1808 on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services precede the European Media Freedom Act in the intent to harmonise media laws and create a more integrated internal market. These adopt a "country of origin" rule, which allows media companies to operate across the EU by following the laws of the country where they are established. While Article 22 is not explicitly mentioned in the operative provisions, the Directive requires Member States to prevent incitement to hatred and to observe the principles of the Charter, reflecting the values of Article 22. Thus, it provides a normative framework rather than a direct legal basis for the Directive.

Directive 2016/801 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing recognises the mutual enrichment that takes place when allowing third-country nationals to move to the EU. Based on Article 22, however, Member States can set conditions for entry or residence, such as having basic knowledge of the national language, or receiving a basic introduction to the country's history, politics, and social structures.

Council Regulation 1260/2012 implementing enhanced cooperation in the area of the creation of unitary patent protection with regard to the applicable translation arrangements sets out that inventors can apply for a European patent in any official EU language. And if they are from an EU country and use a language that is not one of those used by the European Patent Office (French, German, English) they may receive support to cover the translation costs.

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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.

Description

Article 23 of the Charter is concerned with the notion of equality between women and men. Equality is frequently considered as one of the best developed aspects of EU law. Long before the Charter of Fundamental Rights was adopted, equal treatment of men and women had been acknowledged as one of the general principles of Union law (see 1976 *Defrenne II* ruling). This development reflects the incremental progress of primary EU law towards recognising equality between men and women as an aim to be pursued, going beyond a prohibition of sex discrimination. Because availability and accessibility of equal opportunities, as well as the division of labour and other roles between women and men, lies at the core of any human society, any policy or piece of legislation will impact upon it, or be impacted upon by it: thus, Article 23 obliges the EU legislator to ensure equality between women and men in all areas of EU competence.

Article 23, which is underpinned by primary (see Articles 2, 3 TEU and 8, 10, 19 and 157 TFEU) and secondary EU law, and can be understood both as a right and as a principle, consists of two distinct paragraphs: the first paragraph establishes a positive duty to ensure equality between women and men; and the second paragraph recognises that so-called "positive discrimination" measures can be permissible under EU law.

Whilst the formulation of Article 23 upholds a conflated and binary view on sex and gender—as only women and men—the Court of Justice has acknowledged in its case-law that the prohibition of discrimination on ground of sex also encompasses the prohibition of discrimination on grounds of gender, understood as a social construct tied to assigned roles based on perceived biological differences.

A second layer of analysis of the scope of Article 23 requires a focus on discrimination, common to Article 21 of the Charter. In this regard, it is essential to understand that both direct and indirect discrimination are prohibited under EU law, but also that Article 23 itself (as does Article 157(4) TFEU) allows for the possibility of introducing lawful positive discrimination measures—though, as the CJEU established in its case law, positive discrimination is permissible only in exceptionally limited circumstances.

Case Law

The Court of Justice of the European Union has considered Article 23, in a number of cases, including:

Syndicat CFTC (C-463/19): Extra post-maternity leave for female workers bringing up children on their own is permissible. Such leave "may legitimately be reserved to the mother, to the exclusion of any other person, in view of the fact that it is only the mother who may find herself subject to undesirable pressures to return to work prematurely" (para. 54).

WA v INSS (C-450/18): Spanish law was giving mothers with two or more children a supplement to incapacity pensions, when such a supplement was not available for fathers in a similar situation. The Court reaffirmed that "under Article 157(4) TFEU, in order to ensure full equality in practice between men and women in working life, the principle of equal treatment must not prevent any Member State from maintaining or adopting measures providing for specific advantages in order to make it easier for the under-represented sex to pursue a vocational activity or to prevent or compensate for disadvantages in professional careers" (para. 64). However, considering the particular supplement, it found that it "does not appear to compensate for the disadvantages to which women are exposed by helping them in that career and, thus, to ensure full equality in practice between men and women in working life" and, therefore, "constitutes direct discrimination on grounds of sex" (paras. 65-66).

Test-Achats (C-236/09): The Court held that sex-based actuarial differences in insurance premiums or benefits violate the principle of gender equality.

Badeck and Others (C-158/97): The Court provided clarification on the limits of lawful "positive" discrimination under EU law, highlighting that all positive discrimination must allow for a case-by-case, individual assessment of circumstances.

P v S and Cornwall County Council (C-13/94): The Court held that discrimination on grounds of falling "outside the traditional man/woman classification" must be classified as sex discrimination.

Gabrielle Defrenne v Société anonyme belge de navigation aérienne Sabena (C-43/75): Court recognised direct effect of the principle of equal pay for equal work.

As Article 23 of the Charter partially correlates with Article 14 ECHR on non-discrimination, the following case law of the European Court of Human Rights is also helpful in understanding its remit:

Pająk and Others v. Poland (25226/18): Age of retirement. Violation of Article 14 taken in conjunction with Article 8 (right to respect for private life) on the basis that the legislation complained of had clearly introduced a difference in treatment, on the ground of sex, as to the mandatory retirement age for members of the same profession.

Cusan and Fazzo v. Italy (77/07): Choice of family name and transmission of parents' surnames to their children. Violation of Article 14 taken together with Article 8 (right to respect for private and family life) of the Convention, on account of the fact that it had been impossible for the applicants, when their daughter was born, to have her entered in the register of births, marriages and deaths under her mother's surname. The Court affirmed, also on the basis of previous case-law, the "importance of progress towards gender equality and the elimination of all discrimination based on sex in the choice of surname" and that "the tradition of demonstrating family unity by attributing to all its members the husband's surname could not justify discrimination against women" (para. 66).

Zarb Adami v. Malta (17209/02): Discrimination against men. The case raised issues of discrimination against men due to negligible percentage of women requested to undertake jury service, violation of Article 14 read in conjunction with Article 4 § 3 (d) (prohibition of forced labour). In particular, the Court "considers that [the] figures show that the civic obligation of jury service has been placed predominantly on men" and therefore, "there has been a difference in treatment between two groups – men and women – which, with respect to this duty, were in a similar situation" (para. 78).

Mainstreaming

Since 2000, EU treaties have included competences to promote gender equality, especially in employment and pay, through Articles 153(1)(i), 157(3), and 19 TFEU. These powers were expanded by the Treaty of Lisbon, allowing EU action in areas like criminal justice and aspects of family law. While many key areas remain under national control, the EU influences gender equality through legislation, policy coordination, and the Charter of Fundamental Rights. Article 23 of the Charter imposes duties and permits positive action to advance equality between women and men always when EU law applies.

Notable examples of EU legislative measures include:

Council Directive 79/7/EEC on the progressive implementation of the principle of equal treatment for men and women in matters of social security: Establishes the principle of equal treatment between men and women in statutory social security schemes, prohibiting discrimination in areas such as benefits, contributions and eligibility.

Directive 2004/113/EC implementing the principle of equal treatment between men and women in the access to and supply of goods and services: Implements the principle of equal treatment between men and women in access to and supply of goods and services, prohibiting sex-based discrimination outside employment (e.g., banking, insurance, housing). It reinforces Article 23 by extending gender equality beyond the workplace into everyday economic and social interactions.

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: Consolidates EU rules on equal treatment in employment and occupation, covering equal pay, equal treatment in employment conditions, occupational social security and protection against harassment, directly operationalising Article 23 of the Charter.

Directive 2010/41 on equal treatment for men and women engaged in an activity in a self-employed capacity: Ensures equal treatment for men and women engaged in self-employment, including protection against discrimination, recognition of spouses/partners assisting in businesses and access to maternity benefits.

Directive 2019/1158 on work-life balance for parents and carers: Introduces minimum standards for parental leave, paternity leave, carers' leave and flexible working arrangements. It promotes equal sharing of care responsibilities between women and men, supporting Article 23 by addressing structural barriers to gender equality in employment and family life.

Directive 2022/2381 on improving the gender balance among directors of listed companies and related measures: Aims to improve gender balance among directors of listed companies by introducing transparency and selection requirements and encouraging balanced representation on boards. It promotes the achievement of substantive equality and addresses the underrepresentation of women in corporate decision-making.

Directive (EU) 2024/1385 on combating violence against women and domestic violence: Establishes EU-wide rules to prevent and combat violence against women and domestic violence, including criminalisation of certain forms of gender-based violence and strengthened victim protection. It supports Article 23 by addressing structural gender inequality and safeguarding women's fundamental rights and dignity.

In addition, note should be taken of policy instruments including the EU Gender Equality Strategy, which presented policy objectives and actions to make significant progress by 2025 towards a gender-equal Europe, and the forthcoming Gender Equality Strategy 2026-2030. As part of the Strategy, the EU adopted a number of instruments including Directive 2023/970 to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms on pay transparency. On 7 March 2025, the European Commission adopted the Roadmap for Women's Rights, which outlines a long-term vision for achieving gender equality in the EU.

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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.

Description

The Charter applies to both adults and children, and Article 24 includes specific rights for children.

The Charter does not explicitly define the term “child”. However, its interpretation is strongly influenced by the United Nations Convention on the Rights of the Child (CRC), which defines a child as anyone under 18, unless a lower age is set by national law and relevant Instruments of EU secondary law define a child as a person below the age of 18. Article 24 of the Charter is based on the UNCRC, which has been ratified by all the Member States. The UNCRC enshrines 39 children’s rights. Some of these rights are also protected as fundamental rights under the Charter. The relevant general comments of the UN Committee on the Rights of the Child can provide a useful reference for applying Article 24 of the Charter.

Article 24 of the Charter outlines key principles that guide how children’s rights are to be protected when EU policies and legislation are applied. It recognizes that children have the right to protection and care necessary for their well-being, acknowledging their need for special safeguards. The open-ended language – “well-being” – allows the concept to evolve and be interpreted in ways that best serve the needs of children as societal understandings develop. The UNCRC Committee also understands children’s well-being, in a broad sense, including their basic material, physical, educational, and emotional needs, as well as needs for affection and safety (General Comment no. 14). Alongside the right to protection, children are also guaranteed the right to express their views freely. A child’s opinion must be considered in matters affecting them, with the extent of weight given depending on the child’s age and maturity. This principle recognises that children are capable of forming and expressing opinions and should have a say in decisions that impact their lives.

The Charter also establishes that in all actions concerning children, whether taken by public authorities, courts, or other institutions, the best interests of the child must be a primary consideration. This principle, drawn directly from Article 3(1) of the CRC, is a key reference in the caselaw related to Article 24. It ensures that children’s welfare is at the heart of decision-making processes across legal and administrative settings.

Finally, Article 24 guarantees the right of children to maintain regular, direct, and personal contact with both parents, unless such contact would be contrary to the child’s best interests. This provision reinforces the importance of family relationships in a child’s development and well-being.

Case Law

The principle of the best interests of the child is at the heart of decisions concerning the rights and well-being of children. The CJEU has applied this principle in situations such as family cases, immigration and asylum, mainly reviewing preliminary references procedures (Article 267 TFEU, where a national tribunal asks the CJEU for interpretation of EU law such as treaties, regulations, directives, decisions).

In E v B (C-436/13), in a custody dispute where parents lived in different EU countries, the CJEU ruled that the best interests of the child must be a guiding principle in decision-making and that the child's well-being should always come first in such (custody) matters.

In Joseba Andoni Aguirre Zarraga v Simone Pelz (C-491/10), the Court recognised that children's views should be taken into account in a manner appropriate to their level of development. However, the right of the child to be heard, is not absolute and the Court can decide whether it is necessary and how such views are obtained (e.g., hearing, expert reports).

In Barbara Mercredi v Richard Chaffe (C-497/10), involving an unmarried couple, the CJEU established that a child has the fundamental right to maintain regularly a personal relationship and direct contact with both parents, as this is linked to the best interests of the child. This right must be respected, unless there are serious reasons to restrict contact, for reasons of abuse or neglect.

In European Parliament v Council of the European Union (C-540/03), concerning Council Directive 2003/86/EC on family reunification, the Court ruled that a child's right to family life under Article 7 must be understood together with their right to maintain regular contact with both parents. Further, in M.A. v Etat Belge (C-112/20), the Court clarified that the child's best interests are central when adopting a return decision and entry ban, even where the decision concerns the father of the minor.

In Gerardo Ruiz Zambrano v Office National de l'Emploi (C-34/09), the CJEU referred to a child's status as an EU citizen to grant the child's third-country national parents a permit to work and reside in the EU, so that the child could enjoy the rights attached to his/her status as an EU citizen.

In MA and Others v Secretary of State for the Home Department (C-648/11), the CJEU ruled that the best interests of the child should be prioritized in migration and asylum cases involving unaccompanied children. Member States must ensure that children's rights are protected in highly vulnerable situations, such as asylum procedures.

For case law of the ECtHR relevant to children, see Theseus Database: Case-law of the European Court of Human Rights relevant to Children.

Mainstreaming

In the field of consumer and data protection, examples of relevant legislation taking into account the rights of the child include the Directive 2001/95/EC on general product safety, Directive 2010/13/EU on the coordination of certain provisions laid down by law, regulation or administrative action in Member States concerning the provision of audiovisual media services and Directive 2009/48/EC on the safety of toys. In this sector, the CJEU has ruled that protecting children's best interests can justify some restrictions on the common market (see Dynamic Medien (C-244/06); Omega (C-36/02)).

Articles 18 and 19 of the Charter grant children the right to seek asylum and protection from being sent back to a country where they might be at risk. The EU has enacted several important laws related to asylum, such as:

Regulation 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 or the "Dublin Regulation" decides which country is responsible for handling asylum applications.

Directive 2011/95/EU 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 or the "Qualification Directive" defines who can be considered a refugee.

Directive 2013/33/EU laying down standards for the reception of applicants for international protection or the "Reception Conditions Directive" sets standards for how asylum seekers should be treated.

Directive 2013/32/EU on common procedures for granting and withdrawing international protection or the "Asylum Procedures Directive" ensures fair and efficient asylum decisions.

In the field of judicial cooperation in civil matters, Regulation 2201/2003 concerning jurisdiction and the recognition and enforcement of judgments in matrimonial matters and the matters of parental responsibility addresses issues of jurisdiction, recognition and enforcement of judgments in matrimonial and custody matters.

Regulation 4/2009 on jurisdiction, applicable law, recognition and enforcement of decisions and cooperation in matters relating to maintenance obligations addresses aspects related to child support and other family maintenance.

In the field of child-friendly criminal justice, there are two major legal instruments. Directive 2016/8006 on procedural safeguards for children who are suspects or accused persons in criminal proceedings enshrines rights and safeguards for children who are suspects or accused persons in criminal proceedings. It aims to ensure that children's individual circumstances, needs and vulnerabilities are at the centre of decisions taken vis-à-vis the child. Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime focuses on the rights of victims of crime, with many provisions regarding the special support and protection for children who are victims of crime. To further strengthen the rights of victims of crime in the EU, including the rights of the most vulnerable victims, such as child victims, in July 2023, the Commission adopted a Proposal for a directive establishing minimum standards on the rights, support and protection of victims of crime. With the proposed amendments, the Commission aims, in particular, to ensure that child victims are better supported and protected. More recently, the Commission carried out an impact assessment report supporting the proposal for a Regulation on preventing and combating child sexual abuse (SWD/2022/209 final).

In 2021, the European Commission introduced two major policy tools: (i) The EU Strategy on the Rights of the Child, and (ii) The European Child Guarantee. Together, these provide a strong plan to protect all children's rights and make sure vulnerable children have access to basic services like education, healthcare, housing, and good nutrition.

As a commitment from the EU strategy on the rights of the child, the Commission adopted a Recommendation on developing and strengthening integrated child protection systems in the best interests of the child. The Recommendation on developing and strengthening integrated child protection systems in the best interests of the child supports Member States in strengthening child protection systems that reflect children's needs and best interests, with key policy initiatives set out in the annex to the Recommendation. For more policy initiatives, see the annex to the Recommendation.

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UN Convention on the Rights of the Child

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EU Strategy on the rights of the child, including Annex I and Annex II

Practice Guide for the application of the Brussels IIb Regulation

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.

Description

Article 25 of the Charter recognises and respects the rights of older persons to lead a life of dignity and independence, and to participate in social and cultural life. While the Charter does not define "elderly", its scope is interpreted broadly. It applies to people who have retired as well as those still active in the labour market, and potentially to future generations whose rights may be affected by present-day policies. The protection is not limited to European Union citizens but covers all older persons who fall within the scope of Union law.

The right is closely connected to other Charter provisions, including human dignity in Article 1, equality before the law in Article 20, and the prohibition of age discrimination in Article 21. It also interacts with rights to integrity in Article 3, liberty in Article 6, private life in Article 7, family protection in Article 33, and healthcare in Article 35. Its reach extends across many policy areas, from employment, pensions, and social protection to accessibility, cross-border healthcare, and anti-discrimination law.

Like most other Charter rights, Article 25 is not absolute. Under Article 52 of the Charter, limitations may be imposed if they are provided for by law, respect the essence of the right, and are necessary and proportionate to meet objectives of general interest recognised by the Union or to protect the rights and freedoms of others. For example, certain age-based distinctions in employment or pension schemes may be permitted if objectively justified and proportionate.

The provision imposes both negative obligations, to refrain from undermining dignity, independence, or participation, and positive obligations to take action that enables older persons to exercise these rights. Its transformative potential lies in its integration into policymaking, ensuring that demographic change is addressed not only as a social challenge but as a fundamental rights commitment at the core of the European Union's values.

Case Law

The General Court of the European Union has considered Article 25 in a number of cases, including:

In Sotiropoulou and Others v Council of the European Union (T-531/14), the General Court examined measures adopted under the Union's economic governance framework. The applicants claimed that budgetary decisions taken at European level had reduced pensions and social benefits, thereby infringing the rights of older persons. The Court accepted that such macroeconomic measures could affect dignity, independence, and participation in social life, and therefore fall within the scope of Article 25.

In LM v European Commission (T-560/15 P), the General Court considered rules governing pension entitlements for staff of European Union institutions. The dispute concerned whether changes to these entitlements affected the rights of retired officials. The Court acknowledged that such pension rules could engage Article 25 when they alter the conditions under which older persons enjoy retirement, confirming its relevance to administrative as well as social policy measures.

The European Court of Human Rights has ruled a number of cases which inform the interpretation of Article 25 of the Charter, including:

In Farbtuhs v Latvia (7156/09), the European Court of Human Rights (ECtHR) found that imposing a prison sentence on an 86-year-old man without properly considering his age and health could amount to inhuman or degrading treatment under Article 3 ECHR.

In X and Y v Croatia (5193/09), the Court found that depriving an elderly woman with dementia of legal capacity without adequate procedural safeguards breached her rights under Articles 6(1) and 8 ECHR.

In McDonald v United Kingdom (4241/12), the withdrawal of intimate care previously provided to an elderly woman was held to violate her right to respect for private life under Article 8 ECHR, as it lacked a sufficiently clear legal basis.

In Schwizgebel v Switzerland (25762/07), the Court held that discrimination on the grounds of age could violate Articles 8 and 14 ECHR. Although no violation was found on the facts, the judgment confirmed that unjustified age-based distinctions in matters affecting private and family life may breach the Convention.

Mainstreaming

Directive 2000/78/EC establishing a General Framework for Equal Treatment in Employment and Occupation prohibits discrimination in employment and occupation, including on grounds of age. In impact assessments, measures under this Directive are assessed for their effect on equal participation of older persons in the labour market, including prevention of indirect discrimination through recruitment practices, training opportunities, and retirement policies.

Directive 2019/882 of the European Parliament and of the Council of 17 April 2019 on the Accessibility Requirements for Products and Services: its impact assessment examined the accessibility of goods and services used disproportionately by older persons, such as ATMs, ticketing machines, e-books, and transport services, ensuring older persons' independent participation in economic and social life.

Regulation 883/2004 on the Coordination of Social Security Systems: legislative assessments address the right of older persons to uninterrupted social security entitlements when moving within the EU, ensuring pensions, healthcare, and benefits portability without discrimination.

Directive 2011/24/EU on the Application of Patients' Rights in Cross-border Healthcare safeguards access to timely and affordable healthcare across borders, ensuring equal treatment in reimbursement and medical information access, also for elderly persons.

Directive 2012/29/EU establishing Minimum Standards on the Rights, Support and Protection of Victims of Crime: its policy process emphasised age as a key vulnerability factor, requiring tailored procedural and protective measures for older victims, such as adjusted interviewing techniques and accompaniment in judicial proceedings.

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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.

Description

Article 26 of the Charter of Fundamental Rights of the European Union recognises and respects the rights 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. Unlike provisions that establish directly enforceable rights, Article 26 is phrased in a way that requires further specification through legislation and policy at both European Union and national levels. It represents a commitment to inclusion rather than a self-standing, actionable entitlement.

The right has three core elements: independence, integration, and participation. Independence concerns enabling persons with disabilities to make choices and live autonomously, including access to goods, services, and environments. Integration covers both social and occupational dimensions, ensuring access to employment, education, housing, and healthcare. Participation refers to the full involvement of persons with disabilities in cultural, economic, and community life on an equal basis with others.

Article 26 must also be read in light of related Charter provisions: Article 1 on human dignity, Article 21 on non- discrimination, and Article 34 on social security and social assistance, as well as any other relevant rights. Importantly, the Union is a party to the United Nations Convention on the Rights of Persons with Disabilities (UNCRPD), which forms part of Union law and reinforces the interpretation of Article 26 and of all the other Charter rights in relation to persons with disabilities. Under Article 53 of the Charter, nothing in the 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. To that end, as the Union and all Member States are parties to the UNCRPD, the protection of all the rights in the Charter when concerning persons with disabilities shall not be interpreted as restricting or adversely affecting human rights and fundamental freedoms as recognised, in the UNCRPD.

Limitations to this right follow the general rules of Article 52 of the Charter. Any restriction must be provided by law, respect the essence of the right, and be necessary and proportionate to meet legitimate objectives recognised by the Union. For example, accessibility obligations on businesses may be balanced against economic feasibility, but only in ways that do not undermine the core principles of independence and participation.

Thus, Article 26 serves as both a guiding principle for Union action and a tool for interpreting existing rights in a disability-inclusive way.

Case Law

The Court of Justice of the European Union has considered Article 26 in a number of cases, including:

In Chacón Navas (C-13/05), the Court defined disability as a limitation resulting from physical, mental, or psychological impairments which hinder participation in professional life. It emphasised the need for a uniform and autonomous interpretation at the Union level, rather than relying on national definitions.

In HK Danmark (C-335/11 and C-337/11), the Court moved closer to the social model of disability reflected in the United Nations Convention on the Rights of Persons with Disabilities, recognising disability as an impairment interacting with barriers that hinder participation in work on an equal basis with others.

In Fenoll (C-316/13), the Court found that disabled persons engaged in occupational activities in rehabilitation centres could fall within the definition of "workers" under Union law and thus benefit from the rights attached to free movement of workers.

In FAO (C-354/13), the Court held that obesity does not in itself constitute a disability but may amount to one if it entails long-term physical or psychological impairments hindering professional participation.

In Z (C-363/12), the Court declined to consider infertility as a disability under Union law, ruling that the inability to bear a child does not by itself limit a person's capacity to participate in professional life.

In Glatzel (C-356/12), the Court clarified that Article 26 does not itself create subjective rights enforceable by individuals but requires specification in Union or national law. However, it can be used interpretatively to support a disability-sensitive reading of existing rights.

In TC, UB (C-824/19), the Court held that a blind person cannot be entirely excluded from performing jury service, stressing the importance of participation in community life under Article 26 and related directives.

More recently, the Court has continued to engage with disability rights in cases such as HR Rail (C-485/20), where the obligation to provide reasonable accommodation for workers with disabilities was underlined, and AP Assistenzprofis (C-518/22), dealing with support service frameworks.

Article 26 of the Charter correlates most closely with Article 14 of the European Convention on Human Rights (non-discrimination) and Article 8 (private life). The European Court of Human Rights has considered disability in this light.

In McDonald v UK (4241/12), withdrawal of personal assistance leading to "enforced incontinence" raised concerns under Article 8.

In Mouisel v France (67263/01), the Court held that detention conditions must take account of disability to avoid breaching Article 3 on inhuman treatment.

Mainstreaming

Council Decision concerning the conclusion, by the European Community, of the United Nations Convention on the Rights of Persons with Disabilities gives the Convention binding legal effect within the EU legal order and commits the Union and its institutions to uphold its principles in all areas of EU competence.

Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation prohibits discrimination on the ground of disability (among others) in employment and occupation. It requires reasonable accommodation for persons with disabilities and thus ensures that they can participate in professional life on an equal footing. This mainstreams Article 26 by recognising the right of persons with disabilities to benefit from measures supporting occupational integration.

Directive 2016/2102/EU on the accessibility of public sector bodies' websites and mobile applications requires Member States to ensure that digital services of public authorities are accessible to persons with disabilities. By promoting digital inclusion, the Directive translates Article 26 into practice, recognising that independence and social participation in the modern era depend on equal access to online information and services.

Directive 2019/882 on the accessibility requirements for products and services sets accessibility requirements for a wide range of goods and services in the internal market, including banking, transport, computers, e-readers, and e-commerce. The preamble explicitly refers to Article 26, stating that the Directive promotes the application of the Charter by ensuring that persons with disabilities can fully enjoy independence and social and occupational integration.

The European Commission's Union of Equality: Strategy for the Rights of Persons with Disabilities 2021–2030 mainstreams Article 26 of the Charter at the policy level. It commits the Union to remove barriers across all sectors, from employment to digitalisation, and to ensure full implementation of the UN Convention on the Rights of Persons with Disabilities. The Strategy frames disability rights not only as an aspect of non-discrimination but as an essential element of ensuring dignity, independence, and participation in society, in line with Article 26.

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Concluding Observations on the Combined Second and Third Periodic Reports of the European Union

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 Community law and national laws and practices.

Description

Article 27 of the Charter guarantees workers or their representatives, such as trade unions or other workers' organisations, the right to information and consultation in the undertaking of their employment. This right provides an opportunity to influence company decisions which substantially affect workers, such as changes in working conditions, by giving them the opportunity to be heard. This right must be guaranteed "in good time", that is, prior to the final decision of management. To be fully effective, the right must be given more specific expression in EU law or in national law. The objective is to enable workers' participation in the consultation process as fully and effectively as possible, but at the same time, the Article does not oblige the employer to act upon the observations made.

As also mentioned in the explanations to the Charter, the same protections are reflected in Article 21 of the revised European Social Charter, as well as in points 17 and 18 of the Community Charter of the Fundamental Social Rights of Workers of the Council of Europe. Article 27 of the Charter is closely linked to other Chapter IV rights relating to solidarity, in particular the right to collective bargaining and action under Article 28 and the right to fair and just working conditions under Article 31.

Workers' right to information and consultation within the undertaking is not an absolute right. It can be limited in the manner described under Article 52(1) of the Charter – that is, as provided for by law and in a manner that ensures the essence or core of the right is protected. Any limitation must also be necessary and must genuinely meet the objectives of general interest recognised by the EU, or the need to protect the rights and freedoms of others.

Case Law

The Court of Justice of the European Union has considered Article 27 in several cases, including:

Association de Médiation Sociale v Union Locale des Syndicats CGT and Others (C-176/12) was a preliminary request concerning the interpretation of Article 27 of the Charter, along with Directive 2002/14/EC, one of the EU instruments mainstreaming this provision. The main proceeding involved a dispute as to the calculation of the number of employees required to reach the threshold triggering the employer's obligation to establish a worker consultation mechanism. Among other things, the Court noted that in order for Article 27 to be fully effective, it must be given more specific expression in European Union or national law. On this basis, the Court found that Article 27 could not be invoked in a dispute, such as that in the main proceeding, in order to conclude that the national provision should not be applied.

U4U and Others v Parliament and Council (T-17/14) involved a challenge to the European Parliament's refusal to participate in a consultation procedure which led to the adoption of Regulation 1023/2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union, which amended the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union. The Court held that the Parliament's refusal to participate did not constitute a violation of the right to information and consultation of workers under Article 27. Although finding that Article 27 did apply to relations between institutions of the Union and their staff, the Court reiterated that the exercise of these rights is limited to the cases and conditions provided for in Union law. As the Staff Regulations did not require a consultation process to be undertaken, there was no violation.

In Margarita Tapias v Council of the European Union (T-527/16), the applicant was an official of the Council of the European Union who lodged a complaint in relation to decisions made about staff remuneration. She claimed, amongst other things, that the Staff Regulations Committee was not properly consulted and that the Consultation Procedure was not respected in reaching these decisions, and that this amounted to a breach of Article 27 of the Charter. The Court rejected this claim as unfounded, again reiterating that the exercise of this right is confined to the cases and conditions provided for under EU law.

Mainstreaming

Several EU instruments directly address the issue of worker information and consultation:

Most relevantly, Directive 2002/14/EC establishing a general framework for informing and consulting employees in the European Community sets out minimum requirements on the right to information and consultation of employees in undertakings or establishments within the EU. It applies to undertakings and establishments that reach certain employee thresholds within each member State. Among other things, the Directive outlines practical requirements for information and consultations, and creates obligations relating to confidentiality and the protection of rights.

This is further expanded by 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, which requires large multinational companies operating across EU member States to either establish a European Works Council with the defined purpose of informing and consulting with employees on transnational matters, or to create alternative procedures for information and consultation.

Similar requirements also apply to specific changes in working conditions or status. One example is Directive 98/59/EC on the approximation of the laws of the Member States relating to collective redundancies, pursuant to Article 2 of which any employer contemplating collective redundancies must begin consultations with workers' representatives "in good time with a view to reaching an agreement". The Directive requires that in the course of such consultations, workers' representatives be provided with all relevant information and that after informing and consulting, the employer notifies the projected collective redundancies to the competent public authority.

A similar consultation process with accompanying information requirements is outlined under Article 7 of 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, with application in circumstances where an undertaking or business is being transferred to another employer.

Article 27 has also been mainstreamed in impact assessments conducted by the European Commission. For example, the Impact assessment accompanying the proposal for a Directive amending Directive (EU) 2017/1132 as regards the use of digital tools and processes in company law and Proposal for a Directive amending Directive (EU) 2017/1132 as regards cross-border conversions, mergers and divisions assessed a proposal to modify the company law framework at the EU and national level to facilitate cross-border conversions, mergers and divisions. The proposal in question was deemed to positively contribute to the workers' right to information and consultation by providing more transparency for employees in the case of cross-border operations of companies.

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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 conflict of interest, to take collective action to defend their interests, including strike action.

Description

Article 28 of the Charter of Fundamental Rights of the European Union recognises the right of workers and employers, through their organisations, to negotiate collectively and, if necessary, to take collective action in defence of their interests. This provision explicitly includes the right to strike. In doing so, it elevates practices that are central to labour relations, such as collective bargaining and industrial action, to the level of a fundamental right within the EU legal order. Overall, Article 28 reflects the balance between economic freedoms and social rights, by aiming to ensure that collective voice and action remain protected within the EU legal framework.

The right has two essential elements. The first is the right to collective bargaining: the ability of workers' and employers' organisations to negotiate agreements that set employment conditions, wages, and standards. The second is the right to collective action, including strikes and other forms of pressure, which serve as a safeguard when negotiations fail. Together, these elements ensure that the parties in the workplace relationship can engage on more equal terms, and that social dialogue has real practical force.

Like other rights under the "Solidarity" title of the Charter, Article 28 is not absolute. It is to be exercised "in accordance with Union law and national laws and practices". This means that each Member State retains discretion over the procedures and conditions that apply. For example, some countries require ballots or notice periods before strikes. Others restrict the right for specific groups such as members of the armed forces, the police, or essential services. According to the Charter explanations, "the modalities and limits for the exercise of collective action, including strike action, come under national laws and practices, including the question of whether it may be carried out in parallel in several Member States". Any limitations must comply with Article 52 of the Charter: they must be provided by law, respect the essence of the right, and be necessary and proportionate to legitimate objectives such as public safety, health, or the protection of the rights of others.

Case Law

The Court of Justice of the EU has considered Article 28 in a number of cases, including:

In Viking Line (C-438/05), the Court expressly recognised the right to collective action, including strike action, as a fundamental right under Union law. At the same time, it held that the exercise of this right may be subject to restrictions where it conflicts with economic freedoms such as the freedom of establishment, provided such restrictions are lawful, necessary, and proportionate.

In Laval un Partneri (C-341/05), the Court acknowledged that collective action taken to protect workers of the host state against possible "social dumping" could, in principle, constitute an overriding reason of public interest. However, in that specific case the Court held that the action taken by the trade union could not be justified on those grounds, as it disproportionately restricted the freedom to provide services.

In Eurowings (C-613/20), the Court confirmed that the right to strike is guaranteed by Article 28. It emphasised that the decision by a union to invoke this right and launch a strike must be regarded as foreseeable by any employer. This recognition reinforces the idea that strike action is an ordinary, legitimate element of industrial relations in the Union.

In Albany (C-97/96), the Court held that collective bargaining agreements between social partners fall outside the scope of European Union competition law. This judgment established that the pursuit of collective agreements, as protected by Article 28, cannot be treated as anti-competitive conduct.

In Sirjit Singh Bedi v Bundesrepublik Deutschland (C-312/17), the Court considered the compatibility of collective agreements with equality law. It held that Article 2(2) of Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation must be interpreted as precluding a clause in a collective agreement which ceased the payment of assistance once a worker became entitled to early retirement benefits for severely disabled persons. This case illustrates that the exercise of Article 28 rights must still respect other Charter principles, such as non-discrimination.

The European Court of Human Rights (ECtHR) has also contributed to the understanding of collective rights. For instance, in Wilson and Palmer v the United Kingdom (30668/96), it held that freedom of association under Article 11 of the European Convention on Human Rights (ECHR) requires that trade unions be able to protect their members' interests effectively. While not demanding that employers be legally required to enter into collective bargaining, the Court made clear that domestic law must not prevent unions from exercising meaningful influence.

Mainstreaming

Directive 2022/2041 on Adequate Minimum Wages in the European Union explicitly refers to the role of collective bargaining in achieving fair pay. Its impact assessment considered the potential to strengthen collective bargaining coverage in Member States with weaker traditions, while respecting national autonomy. The directive requires states with collective bargaining coverage below 80 percent to establish an enabling framework for social partners to promote bargaining, directly linking the policy design to Article 28.

Directive 2018/957 amending Directive 96/71/EC concerning the posting of workers in the framework of the provision of services was accompanied by an impact assessment that examined the balance between the free movement of services and the right to take collective action. The analysis considered how different options would affect workers' ability to enforce rights and unions' ability to act in cross-border situations. It concluded that clarifying equal pay for posted workers and strengthening enforcement mechanisms would reinforce Article 28 rights while ensuring proportionality in relation to economic freedoms.

Directive 2003/88/EC concerning certain aspects of the organisation of working time has been subject to multiple reviews, many of which explicitly referred to collective bargaining as a key mechanism for setting detailed arrangements on working time. The Commission recognised that the right to bargain collectively allows Member States and social partners to tailor working-time rules to national and sectoral contexts, provided minimum standards are respected.

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Article 29 – Right of access to placement services

Everyone has the right of access to a free placement service.

Description

Article 29 of the Charter provides for the right of access to free placement services within the European Union. The right of access to a free placement service implies access to information on job opportunities, and on administrative requirements within EU Member States – including, for example, the applicable tax regime and social security regime. It can also imply support and information on working conditions within host member states.

Regarding the personal scope of this provision, Article 29 applies to "everyone". This means that EU citizens, and non-citizens alike have the right of access to free placement services. The right therefore applies to every person, regardless of their nationality within EU Member States. Article 29 contains two obligations for the EU and its Member States. First, they cannot deny access to a placement service. Second, they must offer a placement service free of charge. Article 29 is not an absolute right. Limitation on the right is possible under the conditions found in Article 52(1) of the Charter.

Article 29 is based on Article 1(3) of the European Social Charter which, under the Right to Work, states that parties undertake "to establish or maintain free employment services for all workers". Article 29 complements Article 15 of the Charter of Fundamental Rights, i.e. the right to freedom to choose an occupation and to engage in work.

Case Law

The right of access to placement services has not been interpreted by the Court of Justice of the European Union. There is also no similar right within the European Convention on Human Rights.

However, some pre-Charter cases provide some insight into the provision of placement services within the European Union:

In Macrotron (C-41/90), the Court held that, from the perspective of EU competition law and the freedom to provide services, placement services should not stay under State monopoly and may also be provided by private companies.

In Job Centre (C-55/96) the Court confirmed the judgment in *Macroton* and held that placement services should not stay under State monopoly.

Mainstreaming

Regulation 2016/589 on a European network of employment services (EURES), workers' access to mobility services and the further integration of labour markets aims to support labour mobility throughout the EU. EURES is a network for cooperation between the Commission and Member States' public employment services to provide information, advice and recruitment or placement for the benefit of workers and employers. In order to help the workers who enjoy the right to work throughout Member State states, the Regulation is open to all citizens of the Union who have a right to take up an activity as a worker and to the members of their families under EU law. The Regulation also states that Member States should give the same access to any third-country nationals benefiting, in accordance with Union or national law, from equal treatment with their own nationals in that field. The Regulation aims to bring together job vacancies from across the Union and the possibility of applying for those job vacancies, set up arrangements for the provision of related support services to workers and employers and provide for a common approach for the sharing of the information necessary to facilitate such cooperation.

Reference Materials

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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 law and practices

Description

The right of every worker to protection against unjustified dismissal means that when an employer decides to dismiss a worker, they must have valid grounds for the dismissal. They must inform the worker of these reasons and give them a reasonable period of notice. The worker must be given access to effective and impartial dispute resolution. If a court or tribunal finds that the worker has been unjustly dismissed, the worker has a right to redress, including adequate compensation.

The right is enshrined in Article 30 of the Charter as elaborated in Principle 7 of the European Pillar of Social Rights. It is sourced from Article 24 of the (Revised) European Social Charter of the Council of Europe and Convention 158 of the International Labour Organisation. Article 6 of the European Convention on Human Rights is an important source of the worker's right to access to justice and their broader right to an effective remedy.

There is no general EU directive on termination of employment but there are EU directives that concern the dismissal of workers that require implementation by Member States. The Court of Justice of the EU and national courts must identify whether, in the light of the facts of the case, any EU or national law relating to the dismissal of workers engages Article 30.

In this regard, it is important to note that Article 30 is subject to limitations in its scope and interpretation. It only applies "in accordance with Union law and national law and practices", meaning that it does not establish a fully autonomous right but depends on existing legal frameworks. Moreover, under Article 51(1) of the Charter, it is applicable to Member States only when they are implementing EU law; therefore, situations falling outside the scope of EU law will not trigger its application. Member States may define who is a "worker", which may mean that some workers who have no fixed hours or no continuing obligation to work for an employer are not entitled to protection from dismissal.–However, if the dismissal is connected with a right provided for in EU legislation, such as dismissal in retaliation for a worker reporting a breach of EU law, Article 30 will apply. While national law continues to play an important role in defining employment relationships, it should be noted that EU law may impose its own concept of "worker" in areas governed by Union law.

It is also important to note that the right in Article 30 operates subject to some exceptions in national laws of Member States which are permitted under EU law. For example, a probation period of up to six months of service is allowed before a worker is entitled to bring a claim for unjust dismissal.

Case Law

The Court of Justice has considered Article 30 of the Charter in a number of cases, including:

Nagy (C-488/12), Hungarian legislation on the dismissal of civil servants without a reason was outside the jurisdiction of the Court of Justice because there was no connection with an EU Directive. Therefore, the national legislation was not implementing EU law as required under Article 51 of the Charter. Consequently, Article 30 thereof could not be applied.

KO v Consulmarketing, Italian legislation on compensation for unjust dismissal in the context of dismissals of a group of workers for economic reasons did not fall within the scope of the EU

Collective Redundancies Directive, 98/59. The Directive gives Member States freedom to choose between different solutions for achieving the objectives of worker information and consultation. Article 30 did not apply because, according to the Court of Justice, it did not impose a specific obligation on Italy as regards the method of compensation, the objectives of worker information and consultation. Article 30 did not apply because, according to the CJEU, it did not impose a specific obligation on Italy as regards the method of compensation.

Plamaro (C-196/23), Spanish legislation allowed for collective redundancies without consultation with trade unions following the retirement of an employer. It was held that the workers concerned could not rely directly on Article 30 in the national court. This is because it needs more specific expression in EU or national law to be relied upon by individuals.

K.L v X, Polish legislation allowing for the dismissal of a worker without a reason at the end of a fixed-term contract was held to be contrary to EU legislation on fixed-term work. The Polish Court referred to Article 30 of the Charter, but the Court of Justice did not apply it. Instead, relying on Article 47 hereof on the right to an effective remedy, the Court ruled that national legislation must be disapplied by the national court because it violated the worker's right to access to justice.–

Mainstreaming

Article 30 has been given an additional dynamic following the adoption of the EU Social pillar in 2017. Principle 7 of the Social Pillar recognises every worker's right to:

- be informed in writing at the start of employment about their rights and obligations resulting from the employment relationship, including in a probation period, and

- prior to any dismissal, workers have the right to be informed of the reasons and be granted a reasonable period of notice. They have the right to access to effective and impartial dispute resolution and, in case of unjustified dismissal, a right to redress, including adequate compensation.

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 safeguards employee's rights when there is a change of employer. It mainstreams Article 30 by protecting employees against dismissal because of the transfer of an undertaking or business. If an employee is dismissed because of a substantial and detrimental change in their working conditions the employer is deemed responsible. However, if the dismissal is for an economic reason, or it arises from new technology or organisation change, it may be permitted. Note that the Directive only applies to those workers classified as employees under national law.

Directive 2008/94/EC on the protection of employees in the event of the insolvency of their employer protects employees when their employer becomes insolvent. Member States must establish a compensation fund guaranteeing payments of outstanding contractual entitlements – wages, holiday pay etc. It is up to each Member States to decide whether the employee's compensation will include a redundancy payment. Therefore, workers who are classified as employees under national law receive some compensation for losing their jobs due to economic circumstances beyond their control. It also only applies to a worker who has the status of an employee under national law.

Several other directives are also relevant for the right to protection against unjustified dismissal, including:

Council Directive 98/59 on the approximation of the laws of the Member States relating to collective redundancies. Where there is a collective redundancy situation, as defined in the Directive, the employer is obliged to inform workers' representatives and consult them in good time with a view to avoiding, reducing, or otherwise ameliorating the planned redundancies. Note that, under Article 4(1) of the Directive, a Member State can exclude certain categories of "employees" who are not covered by the laws or practice of that State in respect of protection against dismissal.

Council Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding prohibits dismissal of pregnant workers, workers who have recently given birth or who are breastfeeding.

Directive 2019/1158 on work-life balance for parents and carers protects the workers concerned from dismissal for requesting or taking their rights to leave.

Directive 2019/1152 on transparent and predictable working conditions gives workers a right of information about notice periods and procedures for dismissal. It restricts probation periods to six months. Member States must ensure that workers have access to effective and impartial dispute resolution and a right to redress if their rights are infringed under the Directive. This protection is extended to workers who have been dismissed. Member States must take necessary measures to prohibit the dismissal and all preparations for the dismissal of these workers. Penalties must be effective, persuasive and disproportionate.

Directive 2019/1937 on the protection of persons who report breaches of [EU] law ("The Whistleblowers Protection Directive") prohibits retaliation or threats of retaliation against whistleblowers including suspension, lay-off, dismissal or equivalent measures. Member States must provide measures to compensate victims from the damage caused. This can include reinstatement in the job as an alternative to financial compensation.

Directive 2024/2831 on improving working conditions in platform work establishes an enforceable legal presumption of an employment relationship between digital platforms and persons performing platform work and gives these workers a range of rights concerning matters such as data protection and algorithmic management. It protects workers asserting these rights from dismissal giving them access to evidence and support from workers' representatives in proceedings. Workers are entitled to a right to redress that shall include adequate compensation for the damage sustained by any infringement of their rights.

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Interinstitutional Proclamation on the European Pillar of Social Rights

European Commission, Protection in the Event of Unjustified Dismissal

Additional Protocol to the European Social Charter (collective complaints)

Termination of Employment Convention, 1982 (No. 158)

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.

Description

The right of every worker to working conditions which respect their health, safety and dignity is an overarching right applying to all aspects of the employment relationship. It requires respect for the worker as an individual in all matters related to their working environment.

It means that the employer must respect every worker's health and safety by evaluating, preventing, and mitigating risks, such as accidents and illnesses. In addition, they must respect the dignity of the worker as a human being, by providing a safe working environment free from harassment, bullying and coercion.

Within the parameters of this overarching right, Article 31 provides more specific rights for every worker to have a limit on maximum working hours, to daily and weekly rest periods, and an annual period of paid leave.

These rights are intrinsically linked to a worker's health, safety, and dignity. For a safe working environment, workers should not have to work excessive hours that would be injurious to their health and wellbeing. Daily and weekly rest allows workers to recuperate after work and return refreshed, healthy, and productive. Paid holidays provide workers with rest from carrying out duties, enjoyment of relaxation and leisure, and financial security. Time in a worker's life is recognised as a continuum during which family and working life are balanced and there is dignity in both.

Unlike some of the other workers' rights provisions in the Charter, the rights contained in Article 31 are not subject to specified limitations or conditions such as being subject to national law and practices. This is because fair and just working conditions are the most fundamental of social rights for workers as recognised by the inclusion of dignity, the foundational principle in Article 1 of the Charter, which is "inviolable" and "must be respected and protected".

Case Law

The Court of Justice has considered issues relevant to Article 31 of the Charter in many cases, including:

United Kingdom v Council (C-84/94) - concepts of "health" and "safety" should be interpreted broadly to protect workers' health and safety. The Court referred to the World Health Organisation's definition of "health" as "a state of complete physical, mental and social well-being that does not consist only in the absence of illness or infirmity."

JH v KG (C-681/18) - the concept of "working conditions" should be broadly interpreted consistent with the protective function of Article 31(1) as regards workers' health, safety and dignity. An agency worker placed with a business for a temporary period is entitled to fair and just working conditions under both parts of Article 31.

IH v MÁV-START (C-477/21) - the Working Time Directive, 2003/88, gives specific form to workers' rights regarding working hours, rest periods and paid annual leave "expressly enshrined" in Article 31(2) and, therefore, "may not be interpreted restrictively to the detriment of the rights that workers derive from it".

CCOO (C-55/18) - Member States must ensure that minimum rest periods are observed and prevent maximum weekly working hours in the Directive from being exceeded because these give specific form to the fundamental right in Article 31(2). Although there is some flexibility in the Directive's provisions on working hours and rest periods, workers must actually benefit from them. National laws must require measurement of working time to prevent these Charter rights from being meaningless.

DJ v Radiotelevizija Slovenija (C-344/19) - in the light of Article 31(2), stand-by time, when a worker is not required to work but must return to work quickly when contacted, counts as "working hours", if the constraints imposed on the worker, such as being required to stay at or near the employer's premises, objectively and very significantly affect the possibility of freely managing their time and pursuing their own interests.

Williams (C-155/10) – the right to a period of paid annual leave is a particularly important principle of EU social law and is expressly laid down in Article 31(2). Workers must receive their normal pay for that period of rest. The purpose is to put them in the same financial position as during periods of work.

Bauer and Willmeroth (C-569/16) – the right to a period of paid annual leave affirmed for every worker in Article 31(2) is mandatory and unconditional. The provision in Article 31(2) is therefore sufficient in itself to confer on workers a right they may actually rely on in disputes between them and their employer in a situation where the Charter is applicable, as it is in the context of the Directive (see next section).

Mainstreaming

Article 31(1) is put into effect in practice by the continuing dynamic application of the Directive 89/391/EEC on the introduction of measures to encourage improvements in the safety and health of workers at work. It places a general duty on employers to ensure the health and safety of workers in every aspect related to their work. It has a number of "daughter directives" concerning specific aspects of workers' health and safety, such as personal protective equipment and protection against exposure to physical hazards and chemicals.

Article 31(1) is further mainstreamed by the EU Social Pillar of 2017. It states at 10(a) that: "workers have the right to a high level of protection of their health and safety at work"

The European Agency for Health and Safety at Work plays a key role in making Article 31(1) effective. It is a specialist EU body that promotes a culture of risk-prevention and seeks to cultivate a healthy workplace by sharing knowledge and information. The Agency provides guidance to small and medium-sized businesses through a web-based platform: the Online Interactive Risk Assessment.

Also important is the Senior Labour Inspectors Committee, made up of labour inspectors from the Member States. It provides opinions on enforcement of workplace health and safety legislation and shares best practice

The recent Directive 2019/1152 on transparent and predictable working conditions in the European Union, was adopted after an impact assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on transparent and predictable working conditions in the European Union by the European Commission showed that an EU legislative measure was necessary to align with Article 31(1) by requiring employers to give workers a transparent and predictable statement with information about their working conditions

Article 31(2) is further mainstreamed for most workers by the continuing application and judicial interpretation of Directive 2003/88/EC concerning certain aspects of the organisation of working time. It establishes minimum requirements, including:

- 48-hours maximum weekly working time,
- 11 hours daily rest period,

- 24-hour weekly rest period,
- 4 weeks paid annual leave.

The provisions on working hours and rest periods are subject to variations in calculation and application, but a worker must agree to work more than the maximum hours and, if their rest periods are delayed, they must have an equivalent compensatory rest period.

Additional directives apply to mobile workers include those on seagoing vessels and fishers. An example Directive 2017/159 implementing the Agreement concerning the implementation of the Work in Fishing Convention that implements the International Labour Organisation's Work in Fishing Convention following an agreement between employers and workers representatives at EU level. The impact assessment on the Agreement concluded between the General Confederation of Agricultural Co-operatives in the European Union (COGECA), the European Transport Workers' Federation (ETF) and the Association of National Organisations of Fishing Enterprises (EUROPÊCHE), issued prior to the adoption of the 2017 Directive, found that it would promote both parts of Article 31 by providing comprehensive regulation of the working conditions for fishers in an employment relationship. It would place responsibilities on the skipper of the ship to ensure the safety of fishers onboard, including medical care, and the safe operation of the vessel

Reference Materials

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Interinstitutional Proclamation on the European Pillar of Social Rights

Articles 2 and 3 of the European Social Charter

Article 26 of the Revised European Social Charter

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

Description

Article 32 concerns the protection of children and young people at work. It is part of the Charter's "solidarity" section, which includes important workers' rights, such as the right to fair working conditions, social security, healthcare, and collective bargaining—demonstrating the EU's broader commitment to social justice in the workplace.

Article 32 builds on other Charter rights, particularly Article 24 on children's rights and Article 31 on fair working conditions, and is closely linked to international standards like ILO Conventions, Minium Age Convention, 1973 (No.138) and Worst Forms of Child Labour Convention, 1999 (No.182), as well as Directive 94/33/EC on the protection of young people at work (see below). These instruments provide a legal framework that balances protecting children from exploitation with allowing safe, regulated work that supports learning and personal development. These instruments concern young workers but make a distinction between "children", considered as those under 15, and "young people" considered as those aged 15 to 18.

Article 32 consists of two parts. The first bans child labour, generally prohibiting work for those under 15, while allowing strictly limited exceptions—such as vocational training for those aged 14+, or light work in cultural and artistic contexts under special authorisation. The second part ensures that young people, namely those aged 15 to 18, who are legally allowed to work are protected with age-appropriate rules on working hours, night work, and safety, and though safeguards against exploitation.

The protections in Article 32 are not isolated—they are deeply interwoven with other Charter rights, such as the freedom from forced labour in Article 5, the right to education in Article 14, the protection from discrimination in Article 21 and specific employment-related protections in Articles 31, 34 and 35.

Case Law

The Court of Justice of the EU has considered Article 32 in a number of cases, including:

In Landespolizeidirektion Niederösterreich (C650/21), the Court found Austrian law discriminatory for counting only work done after age 18 when calculating seniority, excluding work the claimant had done from age of 14.

Similarly, in Seda Kücükdeveci (C555/07), the Court considered the rules on minimum age for work in the context of calculating the dismissal notice period. The Court ruled that German law breached the principle of non-discrimination based on age by not counting periods of employment before the age of 25, when calculating the dismissal notice period.

In Front Polisario v Council of the European Union (T-512/12), the General Court addressed the protections outlined in Article 32 in the context of an agreement between the EU and Morocco on reciprocal liberalization measures for agricultural and fishery products. The Court emphasized that EU authorities must carefully assess the protection of fundamental rights for the people in the relevant territory before approving such agreements. It must be ensured that the production of goods for export does not negatively impact the local population or violate fundamental rights, including the protection of young people at work and the prohibition of child labour in Article 32.

Forced labour constitutes a serious form of exploitation, including in the context of child labour, and is explicitly prohibited under Article 5 of the Charter. This protection reflects corresponding guarantees under the United Nations Convention on the Rights of the child and the European Convention on Human Rights, with the case law of the European Court of Human Rights playing a central role in defining its scope.

In Siliadin v France (73316/01) concerning an unpaid underage domestic worker from Togo, the Court held that France had failed its positive obligation to provide for adequate criminal offenses to protect children from servitude and forced labour.

In Rantsev v Cyprus and Russia (25965/04) regarding a young deceased victim of sexual exploitation by a prostitution network, the European Court of Human Rights emphasised the positive obligations of the States to take measures to combat trafficking in human beings.

In N.C. v Turkey (40591/11) the Court found that the conduct of the national authorities was not compatible with the obligation to protect a child who had been a victim of prostitution, sexual exploitation and abuse.

Mainstreaming

Directive 94/33/EC on the protection of young people at work, focuses on protecting young people at work from economic exploitation and from work that could harm their health, safety, or development—whether physical, mental, moral, or social—or interfere with their education. It applies to anyone under 18 with an employment contract or relationship, as defined by national law. The Directive sets rules on the legal working age, limits on working hours and rest periods, and requires employers to assess potential risks before employing a young person.

Directive 2000/78/EC establishing a general framework for equal treatment in employment and occupation, promotes equal treatment in employment and occupation across the European Union. It seeks to protect individuals from discrimination based on religion or belief, disability, age, or sexual orientation. The Directive applies to both public and private sectors, covering paid and unpaid work. It addresses and prohibits both direct and indirect forms of discrimination.

Regulation (EU) 2021/1057 establishing the European Social Fund Plus (ESF+) aims to increase employment by using active strategies that help specifically young people, and disadvantaged groups. The ESF+ encourages equality in the workforce and fair working conditions. The Regulation prompts EU Member States to use ESF+ funds to tackle challenges such as child poverty, social inclusion, and provide aid the most deprived, such as homeless persons and children in streets.

Regulation (EU) No 978/2012 applying a scheme of generalised tariff preferences (GSP) also sets out a special incentive arrangement to support sustainable development and good governance in developing countries (GSP+). The GSP+ allows certain countries to export goods to the EU with lower or no import taxes, as long as they commit to following international rules on human rights, labour rights (including banning child labour), environmental protection, and good governance. A revised GSP framework provisionally agreed in late 2025 strengthens monitoring and enforcement of these commitments while maintaining the link between trade preferences and the protection of fundamental rights.

Directive 2013/59/Euratom laying down basic safety standards for protection against the dangers arising from exposure to ionising radiation establishes that Member States must protect apprentices and students aged 16 to 18 who work with radiation by setting strict limits on their exposure. In addition to an overall cap on radiation absorbed, specific limits apply to sensitive areas such as the eyes, skin, and extremities to ensure their safety.

Directive (EU) 2024/1760 on corporate sustainability due diligence requires certain EU and non-EU companies to identify and address human rights and environmental risks in their operations and supply chains. National authorities will be established to enforce the rules, with support from a new European Network of Supervisory Authorities.

Regulation (EU) 2024/3015 on prohibiting products made with forced labour on the Union market empowers the EU to ban the sale, import, and export of goods linked to forced labour. The Regulation covers all forms of forced labour, including those where children are the victims. National authorities and the European Commission can investigate suspicious products and supply chains. If forced labour is confirmed, the goods will be removed from the EU market and/or stopped at the border.

Directive 2011/36/EU, as amended by Directive (EU) 2024/1712 on preventing and combating trafficking in human beings and protecting its victims, sets out a comprehensive framework for addressing trafficking in human beings by establishing minimum rules concerning the definition of criminal offences and sanctions. It also includes common provisions to strengthen the prevention of trafficking, the assistance provided to victims, as well as their protection, taking into account gender, disability and children's perspectives, and using a victim-centred approach. It respects the fundamental rights and observes the principles recognised by the Charter, in particular the respect and protection of human dignity, the prohibition of slavery, forced labour and trafficking in human beings and the prohibition of child labour. According to the Directive "child" shall mean any person below 18 years of age.

Reference Materials

Article 32, European Union Agency for Fundamental Rights (fra.europa.eu)

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European Court of Human Rights – Guide on the case-law of the European Convention on Human Rights: Rights of the child

European Union Agency for Fundamental Rights and Council of Europe – Handbook on European law relating to the rights of the child

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.

Description

Article 33 of the Charter contains two distinct obligations.

Article 33(1) is based on Article 16 of the European Social Charter and views to ensure the effective necessary conditions for the full development of a family aiming to promote the legal, economic, and social protection of family life.

Article 33(1) is based on Article 16 of the European Social Charter and closely linked to Article 7 of the Charter insofar as it lays down obligations to protect family life. The manual entry on Article 9 of the Charter is also a useful point of reference on the wider meaning of the concept of "family life", particularly, as regards the evolution of such notion at European level based on close, continuing, and practical ties rather than formal status.

While countries are not obliged to implement Article 33(1) in a specific manner - except where there is overarching EU law in areas such free movement and the enjoyment of equal treatment - this provision is a cross-cutting principle aimed to reinforce protection of the family through EU law. It thus asserts the enjoyment of protective rights acquired during marriage and in cases of family breakdown, as well as labour-related entitlements to ensure a work-life balance, such as annual leave or the need to ensure minimum social protection, for example, adequate childcare. Article 33(2) overlaps with pre-existing legislation on the right to have a paid maternity leave, the protection from maternity-related dismissal, and parental leave, drawing from the minimum standards in the Maternity Leave Directive, concerning health and safety and health of pregnant workers and workers who have recently given birth or are breastfeeding, and the Parental Leave Directive. From August 2022, Article 33(2) must also be read in light of the newly established rights under the Work-Life Balance Directive, which seeks to achieve gender equality by promoting women's participation in the labour market and equal sharing of caring responsibilities between men and women. The directive establishes new rights: paternity leave, parental leave carers' leave and flexible working arrangements for working parents and carers. According to the explanations on the Charter, the notion of maternity shall cover the period from conception to weaning.

EU legislation limits these rights to those who are "workers" under national law, and there may be limits on the scope of the application of these rights. Maternity pay may be less than pay when working, dismissal during maternity may be allowed in certain situations and parental leave pay may only be enough to help both parents to take leave.

Case Law

The Court of Justice of the EU has considered issues relevant to Article 33 in cases including:

Chatzi (C-149/10) - parental leave is an individual right of the worker-parent, not of the child. The birth of twins does not automatically confer two separate periods of parental leave, but national rules must take proper account of the particular needs of parents of twins.

Commission v Ireland (C-87/12) – the Court clarified that pregnant workers, workers who have recently given birth, and those who are breastfeeding must benefit from effective health and safety protection under EU law. National measures must ensure that workplace risk assessments and protective measures (such as adjustments of working conditions or leave) are genuinely implemented, reinforcing the practical effectiveness of maternity-related protections.

CD (C-167/12) - EU law on paid maternity leave does not cover commissioning mothers in a surrogacy arrangement where they not given birth or adopted the child.

Maïstrellis (C-222/14) – a father who is a worker cannot be refused parental leave merely because the child's mother is not employed. Such a restriction is incompatible with the Parental Leave Directive and equal treatment principles.

Porras Guisado (C-103/16) - dismissal of pregnant workers may be permitted in a collective dismissal scenario as an exceptional case if objective criteria are used to select workers for redundancy (even if the company is still trading). The European Committee of Social Rights (an independent body of 15 experts under the Council of Europe that monitors countries' compliance with the European Social Charter) has concluded that such a law is only permitted if the Company has ceased trading – see European Social Charter (revised) Conclusions 2023 (Spain).

Xi (C-129/20) - each working parent has a right to take parental leave on the grounds of the birth or adoption of a child. Parental leave does not have to be taken at the time of the birth or adoption.

Article 33(1) has not generated autonomous jurisprudence, but is reflected indirectly through case-law on family life, equality, and free movement. This is in line with how the General Court of the EU treated the claim based on this provision in HK v Commission (T-517/16): although Article 33(1) Charter was invoked, the Court did not rely on it and instead resolved the case solely on the basis of the applicable secondary law, pointing to a limited autonomous role of Article 33(1) in EU judicial review.

Mainstreaming

The European Pillar of Social Rights mainstreams Article 33(2) of the Charter. The Social Pillar is a non-binding but influential statement of the EU's social policy objectives. Principle 9 provides that "[p]arents and people with caring responsibilities have the right to suitable leave, flexible working arrangements and access to care services. Women and men shall have equal access to special leaves of absence in order to fulfil their caring responsibilities and be encouraged to use them in a balanced way".

The Social Pillar provided impetus for the adoption of the Directive 2019/1158 on work-life balance for parents and carers. It provides new rights to paternity leave, carers' leave for parents and other carers, and the right to request flexible working arrangements for parenting and care.

Paternity leave – the Directive gives working fathers a right to ten days paid leave to provide care when their child is born. It also applies to equivalent second parents if their status is recognised. It can include days before and after the birth. Workers must be paid at least the national sick pay level during paternity leave. EU countries can exclude workers from the right to payment if they've worked less than six months before the presumed date of childbirth.

Carers' leave – the Directive gives workers five days unpaid leave each year to provide personal care or support to a relative, or someone living in their home, who has a serious medical issue. The relative can be a son, daughter, mother, father, husband or wife, or a civil partner if that partnership is recognised.

Flexible working – under the Directive, workers with children up to an age of at least eight, and carers, who have been employed for 6 months, have the right to request flexible working arrangements to provide care. The length of the arrangement is subject to reasonable limits and the worker can ask to return to their previous work pattern. Employers must deal with requests promptly and give reasons for refusing or postponing such arrangements.

Enforcement - workers relying on these rights retain their employment rights and benefit from changes made during their leave. They have a right to return to their job or an equivalent job.

Finally, the Directive provides that workers taking leave or working flexibly must be protected from discrimination, dismissal or other retaliation for exercising their rights.

Meanwhile, paid maternity leave remains at the pre-Charter level of 14 weeks in the unamended Directive 92/85/EEC on the introduction of measures to encourage improvements in the safety and health at work of pregnant workers and workers who have recently given birth or are breastfeeding with the analysis of national provisions by the European Parliament showing considerable variations in protection across Member States.

Reference Materials

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European Pillar of Social Rights

European Convention on Human Rights (Articles 8 and 14)

European Social Charter revised (Articles 8, 16 and 27)

Article 34 – Social security and social assistance

1. The Union recognizes 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 recognizes 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.

Description

Article 34 of the Charter of Fundamental Rights of the European Union enshrines the entitlement to social security and social assistance, with the aim to protect individuals in situations of need and to combat poverty and social exclusion. The Article is structured in three parts.

The first paragraph affirms the recognition of social security entitlements, covering areas such as maternity, illness, old age, industrial accidents, dependency, and unemployment. These entitlements are subject to EU law and national laws and practices, allowing Member States discretion in implementation.

The second paragraph recognizes these rights for all individuals legally residing and moving within the EU, hence reinforcing equal access to social benefits and advantages. Finally, paragraph 3 focuses on social assistance and housing assistance for those lacking sufficient resources, with the goal of ensuring a decent standard of living. These paragraphs make a distinction between social security benefits (automatic entitlements based on objective criteria) and social assistance (needs-based and often discretionary entitlements). However, the classification depends on the function of the benefits/assistance, not its label under national law or policy.

However, social security questions in relation to EU law are most commonly raised in connection to migration, free movement, and equal treatment. Hence, the primary fundamental rights tool for social protection cases tends to be Article 21 of the Charter, regarding non-discrimination, rather than Article 34.

Article 34 of the Charter does not lay down absolute rights. Under Article 52 of the Charter, limitations are permitted if they are legally grounded, respect the essence of the right, and are proportionate to legitimate objectives. For instance, according to case law of the Court of Justice of the European Union, access to social benefits can in some instances be limited for economically inactive mobile EU citizens, in order to protect national welfare systems. Ultimately, social security is primarily regulated at national level.

Case Law

The Court of Justice of the EU has considered Article 34 in a number of cases, including:

In Kamberaj (C-571/10), the Court ruled that the refusal to grant housing benefits to a long-term resident third-country national violated Directive 2003/109/EC. The case involved unequal treatment compared to EU citizens, and the Court held that long-term residents must not be subject to less favourable treatment in access to social assistance.

In Saciri and Others (C-79/13), the Court addressed the obligations of Member States to provide reception conditions for asylum seekers. It held that from the moment an asylum application is filed, national authorities must ensure access to allowances that guarantee a dignified standard of living. Overburdened reception systems do not justify leaving applicants without proper support.

In Dano (C-333/13), the Court ruled that EU Member States can deny non-contributory social assistance to individuals who do not have a right of residence under Directive 2004/38. In this case, the applicant lacked sufficient resources to support herself and therefore did not meet the conditions for lawful residence. The Court found that such exclusion was lawful under EU law.

In Alimanovic (C-67/14), the Court held that EU Member States may exclude economically inactive EU citizens who are residing solely as jobseekers from receiving non-contributory social benefits. This was found to be in line with Directive 2004/38 and Regulation No 883/2004, as long as the person's residence is based purely on their job-seeking status.

In Land Oberösterreich v KV (C-94/20), the Court examined a national rule requiring basic German language skills as a condition for accessing housing assistance. The Court held that this requirement was unlawful, as the assistance in question qualified as a "core benefit" under EU law, and such language conditions unjustifiably restricted access to that benefit.

In INPS (C-350/20), the Court addressed the exclusion of third-country nationals holding single permits from childbirth and maternity allowances. The Court found this exclusion violated Directive 2011/98/EU, which guarantees equal treatment in social security benefits for third-country nationals who are legally residing and working in the EU.

Mainstreaming

The Recommendation (2019/C 387/01) on access to social protection for workers and the self-employed encourages Member States to ensure that all workers, regardless of their employment status, including non-standard workers and the self-employed, have formal and effective access to adequate social protection. The Recommendation highlights the importance of equal treatment and explicitly refers to fundamental rights, including the right to social security and protection under Article 34 of the Charter.

Reference Materials

Article 34, European Union Agency for Fundamental Rights (fra.europa.eu)

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MISSOC Database

European Social Scoreboard

European Pillar of Social Rights

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 Union's policies and activities.

Description

Article 35 of the Charter contains three main elements: two provisions worded as rights, and one structural mainstreaming obligation.

In terms of rights, Article 35, first, grants individuals the right to preventive healthcare, meaning proactive measures to avoid illness in the form of preventive care. Secondly, it grants individuals the right to benefit from medical treatment, meaning access to curative care when they require it. However, access to and enjoyment of these rights are regulated by the phrase "under the conditions established by national laws and practices," meaning they depend on domestic legal and policy frameworks. As a result, these provisions are commonly understood as principles rather than directly justiciable rights, requiring implementation through national or EU measures to be invoked before courts. Though this has not yet been explicitly confirmed by the CJEU.

Thirdly, Article 35 includes a health mainstreaming obligation, requiring that a high level of human health protection be ensured in the definition and implementation of all EU policies and activities. This provision is identical to Article 168(1) TFEU.

While Article 35 of the Charter has no direct counterpart in the European Convention on Human Rights (ECHR), the European Court of Human Rights (ECtHR) has addressed health-related concerns under various ECHR provisions, notably Articles 2 (right to life), 3 (prohibition of inhuman or degrading treatment), 8 (private life), and 5 (liberty and security).

Like other Charter rights, limitations on Article 35 are governed by Article 52(1) of the Charter: any restriction must be provided by law, respect the essence of the right, and be necessary and proportionate to a legitimate aim. Given its nature as a principle, however, its enforceability often depends on concrete implementing measures at the national or EU level.

Case Law

The Court of Justice of the EU has considered Article 35 in a number of cases, including:

In Pérez and Gómez (Joined Cases C-570/07 and C-571/07), the Court validated population-based criteria for the issue of pharmacy licences, recognising their role in ensuring equitable access to healthcare services.

In Deutsches Weintor (C-544/10), the Court examined whether a German wine cooperative could market its products using the phrase "easily digestible," implying health benefits from moderate consumption. The Court ruled that such wording constituted a health claim under Regulation (EC) No 1924/2006, which prohibits health claims on alcoholic beverages. It found the prohibition justified, as allowing such claims could mislead consumers and encourage alcohol consumption on the basis of purported health benefits. The ruling reflected the regulation's aim of protecting public health, consistent with Article 35 of the Charter, which requires a high level of human health protection in EU policies.

In Susisalo (C-84/11), the Court upheld national rules granting preferential treatment to university-operated pharmacies. It found that such rules pursued legitimate public health objectives, including support for pharmaceutical research and education.

In Geoffrey Léger (C-528/13), the Court upheld a ban on blood donations from certain groups, ruling that such a measure could potentially be proportionate to the aim of protecting public health. The assessment of the proportionality of the measure in the specific circumstances of the case was left to the national court.

In European Commission v Hungary (C-823/21), the Court recognised that public health considerations could justify restrictions on economic freedoms.

In C.Z. and Others (C-626/22), the Court required Member States to carry out health impact assessments under Directive 2010/75/EU on industrial emissions. The judgment confirmed the relevance of Article 35 in environmental regulation, stressing the obligation to integrate health protection into broader policy areas.

Mainstreaming

Article 35 of the Charter and Article 168(1) TFEU require that a high level of human health protection be ensured in all Union policies and activities. In line with this, the European Commission is required to conduct health-related impact assessments when preparing legislative initiatives. Several examples illustrate this.

Directive 2010/75/EU on industrial emissions (integrated pollution prevention and control) was revised following assessments of how stricter emission limits, such as for sulphur dioxide and nitrogen oxides, could mitigate health risks for workers and communities, while maintaining industrial feasibility.

Directive 2008/98/EC on waste integrated health risk evaluations concerning waste-related pollution, including microplastics, highlighting their long-term effects on both human health and ecosystems.

Directive 2024/3019 concerning urban wastewater treatment was assessed for its contribution to safe and clean water access. Health impact analysis confirmed the directive's role in preventing disease transmission and supporting public hygiene, particularly in urban and peri-urban settings.

Regulation 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH) was underpinned by impact assessments identifying public health threats from chemical substances in consumer products and occupational settings. These assessments supported regulatory measures to reduce exposure to carcinogens, mutagens, and substances toxic to reproduction.

Regulation 1924/2006 on nutrition and health claims made on foods required that only scientifically sustained claims are made by producers, to avoid misleading consumers and ensure accurate and truthful health information for all consumers, including vulnerable groups (e.g., children).

Regulation 2015/2283 on novel foods introduced a pre-market authorisation system based on health risk assessments for novel foods such as cultivated meat and chia seeds. This ensures consumer safety for foods with no history of consumption in the EU before 1997.

Regulation 2024/1938 on standards of quality and safety for substances of human origin intended for human application modernises the EU framework governing substances of human origin such as blood, tissues, cells, breast milk, and reproductive cells used in healthcare and research. Its accompanying impact assessment identified risks to donor safety, inconsistent quality standards, and unequal patient access to treatments across Member States.

Directive 2014/40/EU 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 drew upon impact assessments of standardised packaging, flavour bans, and health warning labels. These analyses demonstrated the effectiveness of such measures in reducing tobacco uptake, particularly among young people.

Directive 2019/1158 on work-life balance for parents and carers was supported by impact assessments examining its benefits for physical and mental health. Improved parental leave and flexible work arrangements were found to reduce stress, improve well-being, and foster gender equality in care responsibilities.

Directive 2022/2041 on adequate minimum wages in the European Union incorporated evidence linking income security to improved health outcomes. Assessments showed that financial insecurity correlates with stress-related illnesses and access barriers to medical services.

Directive 2013/33/EU laying down standards for the reception of applicants for international protection for asylum seekers included provisions ensuring access to healthcare and adequate living conditions. Impact assessments focused on safeguarding the health of vulnerable populations, including minors and those with chronic conditions.

The Directive 2011/24/EU on the application of patients' rights in cross-border healthcare clarifies the conditions under which EU citizens may receive medical treatment in another Member State and be reimbursed by their home health system. The Directive was developed in response to Court of Justice case law recognising that health services fall within the scope of the internal market, and it was underpinned by impact assessments identifying legal uncertainty and unequal access to care across borders.

In addition, the EU has adopted a range of direct measures to protect human health, including:

The European Union Legal Framework for pharmaceuticals is aimed at ensuring a high level of protection of public health. It is based on the principle that the placing of a medicine on the market is subject to the granting of a marketing authorisation by the competent authorities. This includes several EU laws, for example Regulation (EC) No 726/2004 of the European Parliament and of the Council of 31 March 2004 laying down Union procedures for the authorisation and supervision of medicinal products for human use and establishing a European Medicines Agency.

Regulation (EU) No 536/2014 of the European Parliament and of the Council of 16 April 2014 on clinical trials on medicinal products for human use and repealing Directive 2001/20/EC establishes a harmonised EU framework for the authorisation and conduct of clinical trials, ensuring a high level of protection of human health.

Regulation (EU) 2024/1938 of the European Parliament and of the Council of 13 June 2024 on standards of quality and safety for substances of human origin intended for human application and repealing Directives 2002/98/EC and 2004/23/EC establishes a harmonised EU framework to ensure a high level of protection of human health by improving the safety, quality, and cross-border availability of substances of human origin, while strengthening protection for donors and recipients and adapting to scientific developments.

Reference Materials

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Comparative table displaying national healthcare legislation of EU Member States

European Health Union: Tackling health crises together

Europe's Beating Cancer Plan: Making a difference

Reform of the EU Pharmaceutical Legislation A single market for medicines putting patients at the centre

Article 36 – Access to Services of General Economic Interest

The Union recognizes and respects access to services of general economic interest as provided for in laws and practices, in accordance with the Treaties, in order to promote the social and territorial cohesion of the Union.

Description

Article 36 of the Charter guarantees access to *services of general economic interest* "as provided for in national laws and practices, in accordance with the Treaties." This Article reflects the commitment of the EU to ensuring that essential services, such as energy, water, postal services, telecommunications, and certain social and health services, remain accessible to all, especially vulnerable or disadvantaged groups.

Rather than creating a standalone, directly enforceable right, Article 36 enshrines a *principle*, closely tied to Article 14 of the Treaty on the Functioning of the European Union **and** Article 106(2) of the Treaty on the Functioning of the European Union**,** which confirm that SGEIs are shared values that promote social and territorial cohesion. Member States are primarily responsible for defining what qualifies as *services of general economic interest*, with EU intervention limited to cases of *manifest error*. However, access to services of general economic interest must still comply with EU law, including rules on competition, internal market freedoms, and citizenship.

Importantly, access to many *services of general economic interest* often relies on prior access to other rights (such as property ownership or income), which means they are often considered *second-order social rights*. Nevertheless, the inclusion of Article 36 in the Charter represents a significant normative shift, framing access to basic utilities and social services as a fundamental concern, potentially opening the door to broader interpretations of universal access.

Restrictions on access to *services of general economic interest*, particularly when based on nationality or residence, must comply with Article 52 of the Charter, meaning they must be lawful, necessary, and proportionate. However, tensions remain, especially where national rules aim to limit eligibility (e.g., for migrants) while EU law promotes equality and citizenship-based access to social benefits.

Case Law

The Court of Justice of the EU has considered Article 36 in a number of cases, including:

In Commission v Netherlands (C-157/94), the Court examined whether the Netherlands exclusive import rights for electricity violated EU internal market rules. Although the Commission argued the rules breached free movement provisions, the Netherlands justified them under Article 90(2) EC (now Article 106(2) Treaty on the Functioning of the European Union), asserting they were essential for the functioning of a service of general economic interest. This case is relevant to Article 36 of the Charter, as it underscores how access to essential services, like electricity, may involve exclusive rights to ensure affordability, efficiency, and social responsibility, thus demonstrating how economic services tied to public interest can justify certain limitations within EU law.

In ANODE v Premier ministre and Others (C-121/15), the Court held that state intervention in fixing regulated gas tariffs can be justified under Article 36 of the Charter, read together with Article 14 and Article 106(2) Treaty on the Functioning of the European Union, if it pursues objectives of general economic interest such as territorial cohesion and security of supply, provided such intervention meets conditions of proportionality and non-discrimination.

In Kauno miesto savivaldybė v UAB Irgita (C-285/18), the Court examined whether Lithuanian rules restricting in-house service contracts, specifically by requiring that public procurement cannot ensure continuity, quality, or availability of services, conflicted with Article 36 of the Charter. The Court affirmed that Member States have discretion in organising services of general economic interest, as protected by Article 36, provided such discretion respects EU principles like transparency and equal treatment.

In Overgas Mrezhi AD (C-5/19), the Court confirmed that access to services of general economic interest, like natural gas networks, must comply with EU rules on transparency and non-discrimination, reinforcing that Article 36 of the Charter supports fair access to essential services within the internal market. It also highlighted that national regulators cannot impose unjustified barriers to entry in liberalised sectors.

Mainstreaming

Regulation 2017/1938 concerning measures to safeguard the security of gas supply establishes a framework to ensure the security of gas supply across the EU, particularly for protected customers such as households and essential social services. It reinforces the principle that all consumers, regardless of location, must have reliable access to gas, even in times of crisis.

Directive 2006/123/EC on services in the internal market aims to remove barriers to the freedom of establishment for service providers and the free movement of services, enhancing the functioning of the internal market.

European Commission, Services of General Interest, including social services of general interest: a new European Commitment, outlines the commitment to ensuring that services of general interest, including social services, are provided effectively and in line with fundamental principles of the internal market.

European Commission, White Paper on services of general interest set out principles and orientations for developing services of general interest, clarifying their role in the EU social and economic model.

Directive 2018/1972 establishing the European Electronic Communications Code provides a framework ensuring universal service and guaranteeing users' rights in the field of electronic communications.

Directive 2024/1788 on common rules for the internal markets for renewable gas, natural gas and hydrogen, common rules for the internal markets of renewable gas, natural gas, and hydrogen, while trying to ensure that these essential energy services remain affordable, reliable, and accessible during the green transition.

Directive 2019/944 on common rules for the internal market for electricity facilitates access to services of general economic interest by setting out rules for a competitive, consumer-centred, and resilient electricity market, while safeguarding universal service obligations and protection for vulnerable customers.

Reference Materials

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Access to services of economic interest

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.

Description

Article 37 of the Charter on environmental protection is formulated as a principle rather than a directly enforceable right to a particular environmental quality.

Article 37 has three main elements: environmental protection, sustainable development and integration of sustainable development into the policies of the EU. The Court of Justice of the EU (CJEU) had already affirmed environmental protection as "one of the Community's essential objectives" in Free movement of goods - Waste oils (C240/83), long before the Charter was adopted in 2000. Article 37 codifies that understanding, embedding environmental protection as a cross-cutting integration principle comparable to Article 11 of the Treaty on the Functioning of the European Union (TFEU), both Articles embedding also the principle of sustainable development. Formal long-term goals of the EU under Article 3(3) of the Treaty on European Union include sustainable development, protection of the environment, and solidarity between generations.

However, limitations exist. Article 51 of the Charter confines the scope of Article 37 only to EU institutions and Member States when applying EU law. Article 37 of the Chapter is a guiding principle. Its practical impact comes through its link to Article 11 of the Treaty on the Functioning of the European Union and Article 191 of the Treaty on the Functioning of the European Union. This means that individuals and groups should invoke specific Treaty obligations with impacts outside the EU (e.g. Regulation 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation), and use Article 37 as an interpretative guide to support claims, instead of relying solely on Article 37. Article 191(1) of the Treaty on the Functioning of the European Union specifies that Union policy on the environment shall contribute to "promoting measures at international level to deal with regional or worldwide environmental problems…" and references principles such as the principles of prevention and precaution.

In sum, Article 37 of the Charter is a principle that to date has primarily been used as an interpretative tool and a means to giving legal weight to the EU's environmental objectives. It does not create an individual justiciable right but serves to guide integration of environmental protection across EU internal and external policies.

Case Law

The Court of Justice of the EU has considered Article 37 in a number of cases, including:

In Romonta (T-614/13), the General Court examined whether limits on the freedom to conduct a business and the right to property were excessive when compared with the goal of environmental protection. The company claimed that EU emission rules were disproportionate. The Court referred to Article 37 to confirm that protecting the environment forms part of the Union´s general interest and can justify restrictions on economic freedoms.

In Ilva steel plant (C-626/22) case, the Court of Justice considered whether Italy properly balanced environmental and health protection with employment concerns in managing a large industrial site. Reading Directive on industrial emissions (Directive 2010/75/EU) in the light of

Article 37, the Court ruled that environmental and health risks must be fully assessed before granting or renewing permits. Where serious danger exists, operations must be suspended.

In PAN Europe & Bee Life (T-600/15) case, environmental organisations argued that Article 37 gave them the rights to challenge EU pesticide approvals. The General Court rejected this claim, stating that Article 37 is a principle, not an enforceable right and therefore individuals cannot extent access to the Court.

The European Court of Human Rights has used rights such as the right to life (Article 2) and the right to respect for private and family life (Article 8) of the European Convention on Human Rights to require governments to prevent and control environmental harm and advance the development of right to a healthy environment address in the following caselaw:

In López Ostra v Spain (16798/90), the Court found that severe pollution from a waste-treatment plant near the applicant's home violated her right to private and family life. The judgment clarified that environmental pollution can directly interfere with the enjoyment of one's home and well-being. To comply with the Convention, states must therefore take measures, such as monitoring, regulating, and reducing pollution, to prevent serious harm. The environment became part of what the Court considered necessary for a dignified private life.

In Verein KlimaSeniorinnen Schweiz and Others v Switzerland (53600/20), the Court went further by recognising that insufficient climate-change action can breach Article 8 of the European Convention on Human Rights. It held that states have a duty to adopt and implement effective laws and policies to limit climate risks, especially to protect the lives and health of vulnerable groups. This means that governments must not only avoid causing environmental harm but must also take proactive steps to safeguard citizens from foreseeable environmental threats.

Mainstreaming

Directive 2007/60/EC on the assessment and management of flood risks refers to the Charter's commitment to a high level of environmental protection and connects flood control with wider environmental goals such as protecting rivers, wetlands, and habitats. In this way, Article 37 helps clarify that flood-prevention policies are not only about safety, but also about improving environmental quality and supporting sustainable water governance across the European Union.

Directive 2014/52/EU, updates the EU rules on assessing the environmental effects of projects like roads, factories, or wind farms, aims to make sure development happens responsibly. It strengthens how projects are assessed in terms of their environmental impacts. The Directive refers to the EU Charter's duty to keep a high level of environmental protection in all Union policies. The Directive reflects the spirit of Article 37 helping prevent harm before it happens by making environmental care, part of planning and authorising projects, not added later.

Directive 2001/42/EC on the assessment of the effects of certain plans and programmes on the environment requires authorities to assess the environmental effects of plans and programmes such as energy, transport or land-use plans before they are adopted. It builds environmental thinking into early policy design, not just at project stage. In spirit, it mirrors Article 37 by integrating the requirement of a high level of environmental protection across sectors and guiding long-term choices toward sustainability.

Regulation 2021/1119 establishing the framework for achieving climate neutrality mirrors the language of Article 37, which reaffirms that the Union promotes a high level of environmental protection and improvement of environmental quality in line with sustainable-development principles.

Regulation 2023/1115 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation on deforestation-free products refers to Article 37, confirming that protecting the environment is a fundamental duty in EU policy. In doing so, it brings the Charter principle into trade and market rules, showing how environmental protection must be built into all EU actions, not only those labelled as “environmental” laws.

Reference Materials

Article 37, European Union Agency for Fundamental Rights (fra.europa.eu)

Elisa Morgera and Gracia Marín Durán, “Article 37 – Environmental Protection” in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (2nd edn, Hart 2021)

UN General Assembly Resolution 48/13

UN General Assembly Resolution 76/300

Article 38 – Consumer protection

Union policies shall ensure a high level of consumer protection.

Description

Article 38 of the Charter enshrines the right to Consumer Protection. While this provision is part of the Charter, it outlines a principle rather than a mere right. This distinction is evident in the language used, which avoids rights-based terminology and instead presents strong consumer protection as a goal of the European Union. Under Article 51 of the Charter, rights must be respected, whereas principles are to be observed. Secondly, it should also be noted that this provision is addressed to the *Union*, not the Member States.

The most widely accepted definition of "consumer" (in EU consumer protection law) comes from Article 2(1) of the Consumer Rights Directive. It describes a consumer as any individual acting for reasons unrelated to their trade, business, craft, or profession.

The relevance of consumer protection legislation rests in that it aims to address the power imbalance between consumers and those who sell them goods and services. As the Court has affirmed for instance in Océano Grupo Editorial (C-240/98), the reasoning behind this principle is rooted in the recognition that consumers are generally at a disadvantage compared to sellers or providers, both in terms of negotiating power and in their level of knowledge.

Consumer protection serves an important balancing function against other fundamental rights, such as Article 16 of the Charter on the freedom to conduct a business or Article 17 of the Charter on the right to property. The Court has ruled on multiple occasions that other fundamental rights can be outweighed by the importance of consumer protection. As we will see below, however, this provision is not absolute and can be limited.

Case Law

The Court of Justice of the EU has considered Article 38 in a number of cases, including:

In McDonagh (C-12/11), the Court recognised that the objective of consumer protection under Article 38 of the Charter could justify restrictions on the freedom to conduct a business. It highlighted/ accepted that pursuing a high level of consumer protection might necessarily lead to significant economic consequences for some businesses.

In Airhelp (C-28/20), which dealt with passenger compensation for flight cancellations due to strikes, the Court again gave priority to the objective of consumer protection. It ruled that consumer rights under EU law took precedence over the airline's rights to do business and to property.

In Novo Banco (Joined cases C-498/22 and C-500/22), the Court addressed the claims of Spanish consumers who suffered financial losses dealing with a Portuguese bank. While acknowledging the importance of safeguarding investors and creditors, the Court made clear that consumer protection is not absolute and does not automatically outweigh other legitimate public interests, such as maintaining financial stability.

In NS (C-208/19), the Court used Article 38 to guide the interpretation of consumer protection legislation. The case dealt with consumers' right to cancel contracts with architects. The Court sided in favour of the consumers, holding that exceptions to EU consumer protection rules must be narrowly interpreted and that limitations on withdrawal rights should be construed restrictively.

Mainstreaming

Directive 2011/83/EU on consumer rights aims to support the smooth operation of the internal market by ensuring a high level of consumer protection. It applies to contracts between consumers and traders – where a trader is defined as any individual or entity acting in a professional capacity when entering into relevant contracts. These include any agreements where the consumer pays or agrees to pay a price. However, certain sectors, like financial services, are excluded. The Directive outlines the information traders must provide, formal requirements for contracts, and rules on consumers' right to withdraw.

Directive 2005/29/EC on unfair commercial practices in the internal market addresses business-to-consumer conduct at all stages of commercial transactions. It prohibits practices that breach the standard of professional diligence and that significantly distort or are likely to distort the average consumer's economic decisions. The Directive also lists specific unfair practices, including misleading and aggressive tactics. Its enforcement provisions, particularly Article 11, require Member States to ensure there are mechanisms to address and prevent unfair practices. These mechanisms must allow individuals or organisations with a legitimate interest to (a) take legal action against unfair practices and/or (b) bring them to the attention of relevant administrative authorities with the power to investigate or act.

Reference Materials

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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.

Description

Article 39 of the Charter contains both a reference to a classical citizenship right and a reference to non-discrimination on one particular ground. The essential citizenship right comes second: paragraph 2 hints at a general right enjoyed by all EU citizens to elect and get elected to the European Parliament, no matter where in the territory of the Union they reside, naturally connecting to the value of democracy in Article 2 of the Treaty on European Union (TEU), and the principle of democracy in Articles 10 and 14 TEU. Paragraph 1 is more modest in scope, as it contains but a non-discrimination right, essentially confined to the ground of (an EU) nationality; it mirrors Articles 20(2)(b) and 22(2) TFEU.

The structure of Article 39 reflects its historical development. Although the idea of direct elections to the European Parliament with a uniform electoral procedure across the EU dates back to 1957, and direct elections have taken place since 1979, efforts by the European Parliament to introduce a single EU-wide electoral system under Articles 14(2) TEU and 223(1) TFEU have repeatedly been blocked by the Council.

The absence of a uniform electoral procedure leaves the substantive content of this provision largely dependent on national arrangements. Moreover, the principle of equal suffrage is not expressly enshrined in Article 39 of the Charter and therefore is not part of its explicit protection. Representation in the European Parliament is determined under Article 14(2) TEU on the basis of degressive proportionality. That system ensures a balance between the representation of citizens and that of Member States, thereby reflecting the Union's dual character as both a union of citizens and a union of states.

Case Law

The Court of Justice of the EU has considered Article 39 in a number of cases, including:

Delvigne (C-650/13), where the CJEU made a direct reference to Article 39 of the Charter, plays a crucial role here. It was the first reaction to the Lisbon Treaty innovation, moving the provisions on EP elections beyond a mere non-discrimination principle, what is now established in Article 39(2) of the Charter. In this case, the Court underlined the need to observe proportionality in cases of disenfranchisement.

Delvigne appears to codify earlier European Court of Human Rights (ECtHR) case law, in particular Matthews v UK (24833/94), where the ECtHR established that the European Parliament is definitely a "legislature" in the sense of Article 3 of Protocol 1 ECHR. This provision requires all the Member States of the Convention system to enable their citizens to elect a legislature: a general democracy principle in the ECHR system.

While underlining the importance of democracy in general is important, non-discrimination plays a key role here too. This concerns both non-discrimination on the basis of nationality, which we find in Article 39(1) of the Charter and, importantly, a general principle of equal treatment, as the Court found in Eman and Sevinger (C-300/04). This case law prohibited the Netherlands to continue disenfranchising Dutch citizens in the Caribbean countries of the Kingdom of the Netherlands, such as Aruba, Statia or Curaçao, which do not make part of the internal market, enjoying the status of Overseas Countries and Territories Associated with the EU. Since the Court compared Dutch citizens resident in Aruba—a constituent part of the Kingdom of the Netherlands lying outside the internal market and subject to statutory disenfranchisement—with other Dutch citizens residing outside the EU, the case extended beyond the scope of non-discrimination on grounds of nationality and contributed to the development of democracy as a general principle of EU law.

Another example of the Court's successful attempts to develop the law in the direction of general enfranchisement and adherence to democratic principles is Spain v United Kingdom (C-145/04). Here, the CJEU disagreed with a restrictive reading of the scope of the EP election right by Spain. As long as Articles 20(2)(b) and 22(2) of the Treaty on Functioning of the EU (TFEU), referring to the right of all EU citizens no to be discriminated on the basis of nationality in the context of EP elections, do not prohibit non-citizen enfranchisement, it would be incorrect to interpret EU law as it stands as disallowing the Member States to include some groups of non-citizens into the EP franchise. Consequently, qualifying Commonwealth citizens resident in Gibraltar could take part in EP elections until the moment of the UK's withdrawal from the EU.

Mainstreaming

The right of Union citizens to participate, as voters and candidates, in elections to the European Parliament, as reflected in Article 39 of the Charter of Fundamental Rights, has a long and complex history in both primary and secondary EU law.

The Treaties establish a specific legislative mechanism in Article 223(1) TFEU, empowering the European Parliament to propose provisions for the election of its Members by direct universal suffrage on the basis of either a uniform electoral procedure or common principles applicable across the Union. This mechanism, introduced at an early stage of European integration, has not resulted in the adoption of a genuinely uniform electoral framework. Although the European Parliament has made several attempts to activate this procedure, agreement in the Council—acting unanimously and subject to national constitutional approval—has not been forthcoming.

As a result, Article 39 of the Charter safeguards a right that is exercised through a fragmented regulatory landscape. European Parliament elections are currently governed by national electoral procedures that differ with regard to eligibility conditions, voting arrangements, party regulation, and electoral systems.

Article 14(2) TEU provides for degressively proportional representation, which departs from the principle of equal suffrage as understood in national democratic systems. Neither Article 39 of the Charter nor the relevant Treaty provisions alter this framework, but instead codify the existing model of representation.

Secondary legislation has given partial effect to the right. Directive 93/109/EC laying down detailed arrangements for the exercise of the right to vote and 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 lays down the conditions under which Union citizens may vote and stand as candidates in European Parliament elections in a Member State of residence, while Decision 2002/772/EC introduces certain common elements to national electoral procedures. These measures ensure formal compliance with Union law, but they do not overcome the underlying structural fragmentation. No legislative initiatives are currently pending that would address the core deficiencies in the uniformity and equality of the right as envisaged in Article 39 of the Charter.

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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.

Description

This right guarantees EU citizens both the right to vote and the right to stand as candidates in municipal elections. A separate Article 39 of the Charter is dedicated to the right to vote and stand as candidate in European Parliament elections.

As indicated by its scope, Article 40 of the Charter only grants rights concerning local elections. It does not confer voting or candidacy rights at other levels of a Member State's political system. This means it does not apply, for instance, to regional or national parliamentary elections, unless the Member State decides on its own motion to extend such rights –something that is not prohibited by EU law.

Furthermore, this right is strictly grounded in the principle of non-discrimination. Hence, any obstacles to exercising the right are only legally problematic if they result in unequal treatment between non-national EU citizens and the host country's own nationals. This principle of non-discrimination is a cornerstone of both the internal market and EU citizenship, ensuring that Member States cannot subject EU citizens from other countries to stricter requirements or limitations than those faced by their own nationals.

Case Law

The Court of Justice of the EU has considered Article 40 of the Charter in a number of cases, including:

The first ruling on Article 40 of the Charter came in 2022 with EP (C-716/22), which addressed whether a UK national retained the right to vote in French elections after Brexit. The Court ruled that only nationals of EU Member States can be EU citizens, and that UK nationals automatically lost this status with Brexit. As a result, the right to vote in local elections under EU law also ceased, with no need for an individual assessment of proportionality. The central point is that voting rights under Article 40 are directly tied to EU Member State nationality; once that is lost, the related rights are also forfeited, regardless of personal circumstances or duration of residence. While individual Member States may choose to grant local voting rights to third-country nationals, EU law does not require them to do so.

In Commission v Poland (C-814/21), the Court ruled that Poland violated EU law by preventing non-Polish EU citizens residing in Poland from joining political parties. The Court found that under Article 22 TFEU, EU citizens living in a different Member State other than that of their nationality must be allowed to vote and run in municipal and European elections on equal terms with nationals. The Court's reasoning stressed that political parties are essential for candidates to gain support and be elected. By excluding non-national EU citizens from party membership, Poland made it more difficult for them to be nominated or win elections—even if they could technically run as independents. This amounted to discrimination and breached Article 22 TFEU.

Similarly, in Commission v Czech Republic (C-808/21), national law restricted political party membership to Czech citizens only. Like in *Commission v Poland*, the Court ruled that denying non-Czech EU citizens the ability to join political parties effectively restricted their access to the resources and support necessary to stand for election. While they might still run as independents or appear on party lists, the absence of party membership diminished their influence in candidate selection, reduced their public visibility, and placed them at a disadvantage compared to Czech nationals. The Court also countered that permitting EU citizens to join political parties for local and European elections does not endanger a Member State's national identity.

Mainstreaming

The Treaties assign the Council the responsibility of establishing detailed rules for implementing the right to vote and stand as a candidate in municipal elections. Since 1994, various Council Directives have taken up this task.

Council Directive 94/80/EC (as amended) starts by laying down key definitions of what is meant by "municipal" as well as by "election". The former refers to "basic local government units" as further defined in the annex as including, for instance, towns, cities, communes, and boroughs. For its part, "elections" means "elections by direct universal suffrage". Certain clarifications are also provided. For instance, if voting is compulsory in the Member State in question, the authorities may oblige EU citizens from other Member States enrolled in the electoral register to vote (Article 7).

A significant revision effort related to this Directive was sparked by the European Parliament in 2017. In response, the European Commission Proposal for a council directive laying down detailed arrangements for the exercise of the right to vote and to stand as a candidate in municipal elections by Union citizens residing in a Member State of which they are not nationals introduces updates to the relevant Council Directive in 2021. A central aim of this proposal is to improve citizens' access to information—a key obstacle preventing many EU citizens from exercising their electoral rights. To address this, the proposal introduces measures such as requiring Member States to appoint authorities responsible for proactively informing resident EU citizens about voter registration procedures (outlined in the new Article 12). The required information would include the citizen's registration status, the election date, voting procedures, and where to find further details about the election process.

Additionally, an EU parliamentary committee called for the removal of a derogation provision that allows Member States to limit voting rights for mobile EU citizens in municipalities where they make up more than 20% of the resident EU population. This restriction remains in Article 13 of the proposed directive.

The proposal is still under consideration and has not yet been adopted.

Reference Materials

Article 40, European Union Agency for Fundamental Rights (fra.europa.eu)

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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. 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.

<u>Description</u>

Article 41 of the Charter of Fundamental Rights reflects, but is distinct from, the general principle of good administration in EU law developed by the Court of Justice. While the Charter right applies to the institutions, bodies, offices, and agencies of the European Union, the general principle of good administration extends to the Member States when they implement EU law.

It guarantees, firstly, that every individual has the right to have their affairs managed impartially, fairly, and within a reasonable time by EU institutions, bodies, offices, and agencies.

This right to good administration plays a crucial role in safeguarding the rule of law within the Union. It promotes legality and accountability by preventing arbitrary actions and ensuring that decisions are grounded in law. Article 41 outlines several key components of this right: the right to be heard, access to one's file, and the obligation for institutions to provide reasons for their decisions. Yet this list is not exhaustive.

The Article also affirms a right to damages, already recognised by Article 340 TFEU, as well as a right to communicate with institutions in any of the official EU languages listed in Article 55 TFEU. Notably, the Charter extends this linguistic right to non-EU individuals and companies.

When it comes to the right to receive impartial treatment, Article 41 encompasses both objective and subjective dimensions. The former demands institutional neutrality, requiring sufficient safeguards to eliminate any legitimate concerns of bias, even without proof of actual prejudice, whereas subjective impartiality ensures that individuals involved in decision-making are free from personal bias or conflicts of interest.

The requirement to handle matters within a reasonable time calls for decisions to reflect the complexity and urgency of each case. Nonetheless, delays alone cannot in themselves invalidate decisions.

Finally, the right of access to one's file allows individuals to review information held about them, distinct from the broader right of access to documents under Article 42 of the Charter. The right to be heard, closely linked to Articles 47 and 48 of the Charter, providing for the right to an effective remedy and the rights of defence, ensuring that individuals can present their case before any adverse action is taken, safeguarding against unjust or arbitrary decisions.

While limitations are possible under Article 52(1) of the Charter, outright denial of this right should be avoided where reasonable accommodations are feasible.

Case Law

The Court of Justice of the EU has considered Article 41 in a number of cases, including:

In HN (C-604/12), the Court affirmed that Member States must comply with the requirements of good administration whenever they implement EU law. Thus, even if the Charter right itself binds only the EU institutions, the underlying principle of good administration also binds national authorities when they act within the scope of EU law.

In its Franchet and Byk v Commission (T-48/05) ruling, the General Court held that the refusal to provide access to files pertaining to their investigations by OLAF did not violate Article 41 of the Charter, since such access must respect confidentiality and secrecy. Therefore, OLAF was not obligated to provide access before issuing its final report. However, the Court did find that the duration of OLAF's investigation — lasting over three years — breached the requirement under Article 41 to handle matters within a reasonable time.

In Stevi and The New York Times v Commission (T-36/23), the General Court ruled that the Commission had violated the applicants' Article 41 rights by failing to adequately respond to an access to documents request concerning SMS-texts exchanged between the Commission President and the CEO of Pfizer related to COVID-19 vaccine negotiations. The Court grounded its reasoning solely in Article 41 of the Charter, holding that the Commission could not simply claim that the requested text messages did not exist; once the applicants plausibly established their existence, the burden shifted to the Commission to plausibly explain why it was unable to find the documents, instead of simply stating it did not hold them.

National courts have similarly applied the general principle of good administration in cases against Member States. A recent example is the judgement of the Portuguese supreme administrative court (11/2024) concerning a residence permit application. Although authorities were required to decide on the application within 90 days, the process went on for more than four years. The national court ruled that this excessive delay constituted a breach of Article 41 of the Charter.

Mainstreaming

Directive 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries promotes the right to good administration. Specifically, it strengthens legal certainty and reduces the risk of arbitrary or unfair decision-making by establishing clear procedures and standards for how Member States coordinate consular protection for EU citizens without representation. Furthermore, by involving the Commission in oversight and support for implementation, the Directive would help ensure that Member States administer consular protection fairly, impartially, and within a reasonable timeframe.

The European Code of Good Administrative Behaviour updated by the European Ombudsman sets out guidelines for sound administrative conduct. The Code goes beyond the wording of Article 41 of the Charter by including further principles such as the prohibition of abuse of power and the protection of legitimate expectations, promoting best practices and harmonisation across EU institutions.

Reference Materials

Article 41, European Union Agency for Fundamental Rights (fra.europa.eu)

Paul Craig, "Article 41 – The Right to Good Administration" in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (2nd edn, Hart 2021)

Tobias Lock, "Article 41 CFR" in Manuel Kellerbauer and others (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary* (2nd edn, OUP 2024) 555

Rhita Bousta, "Who Said There is a 'Right to Good Administration'? A Critical Analysis of Article 41 of the Charter of Fundamental Rights of the European Union" (2013) 19 European Public Law 481

Alberto Alemanno, "Text Messages, Transparency, and the Rule of Law: Pfizergate and the Fight for Institutional Accountability", *Verfassungsblog,* 21 May 2025 (accessed 10 January 2026)

Ask the EU: Get answers from EU institutions

Article 42 – Right to 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.

Description

This right allows any person residing in the EU to request access to documents held by EU institutions, bodies, offices and agencies, including "any content whatever its medium … concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility". The right's purpose is to promote transparency, ensuring that the EU operates openly and maintains legitimacy in the eyes of the public. Transparency plays a crucial role in fostering trust, holding institutions accountable, and enabling citizens to participate meaningfully in the democratic process. Hence, public access to documents is closely tied to the democratic nature of the EU institutions.

This right can be exercised by EU citizens as well as by those legally residing in these countries. Additionally, companies with a registered office in an EU Member State are also entitled to request documents from EU institutions. Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents giving concrete expression to this fundamental right also grants EU institutions the discretion to extend this right to third-country nationals residing outside the EU.

Article 15(3) TFEU further specifies that this right applies to documents from *all* EU institutions, bodies, offices, and agencies—not only the Parliament, Council, and Commission.

The right of access to documents is not absolute, meaning exceptions to it are possible. These are provided for in the Access to Documents Regulation and include "mandatory" and "balancing" restrictions. The former include public interest matters (i.e. public security, defence and military matters, international relations, and financial, monetary, or economic policy), as well as privacy-related matters. Unless there is a demonstrable overriding public interest in disclosure, balancing restrictions can be imposed when disclosure would undermine the protection of: commercial interests; court proceedings; inspections, investigations, and audits; and decision-making processes.

Case Law

The Court of Justice of the EU has considered Article 42 in a number of cases, including:

Bavarian Lager (C-28/08 P) demonstrated the tensions that can arise between transparency and other interests such as data protection. It revolved around the question of whether the Commission had to publicly disclose names included in a document. The institution had held a meeting with government and beer industry representatives as part of an investigation into an infringement procedure complaint related to UK legislation. The applicant in the case requested the minutes of that meeting, including the name of the attendees. The Commission refused to publish the names. The Court of Justice found that names did constitute "personal data" in the sense of the data processing regulation. Since the individuals at the meeting did not consent to have their names disclosed, the plaintiff had to demonstrate the necessity of the disclosure. In the end, the Court decided that since access had been granted to most of the documents' content, the right of access had not been infringed.

Access Info Europe (C-280/11 P) case involved an interpretation of one of the exceptions to the wide right of access to documents under the Access to Documents Regulation. The non-profit Access Info Europe had put forward a request to have access to certain documents related to a proposal for a new regulation on access to documents. The Council had refused to disclose which Member States had put forward proposals for amendments or re-drafting. The Council's justification was based on the exception on the protection of the decision-making process. They reasoned that disclosure would have reduced the delegations' room for manoeuvre during the negotiations and hence impaired the Council's ability to reach an agreement. Overall, the Court concluded that the Council had not established that its decision-making process might be seriously undermined.

Another case law example is ClientEarth (C-57/16 P). This case involved the Commission's refusal to grant access to impact assessment documents related to access to justice in environmental matters. Like the *Access Info Europe* case, the Commission justified its refusal by citing the need to protect the decision-making process. However, the Court of Justice decided that even when the decision-making process is ongoing, disclosure allows citizens to understand the reasoning behind the EU's legislative actions and express their views. As a result, the ECJ overturned the General Court's ruling and annulled the Commission's decision.

Finally, the most recent case involving access to documents is Stevi and The New York Times v Commission (T-36/23). This case was not decided on the basis of Article 42 of the Charter, but rather Article 41 (the right of good administration). Still, the Court ruled that the Commission was wrong to reject a journalist's request for access to text messages exchanged between the President of the Commission and the chief executive officer of Pfizer relating to a COVID-19 vaccine supply deal. The Commission's decision was annulled.

Mainstreaming

Article 42 of the Charter is mainstreamed through Regulation 1049/2001 regarding public access to European Parliament, Council and Commission documents. This Regulation defines the bounds of what constitutes a "document", defining it broadly as "any content whatever its medium (written on paper or stored in electronic form or as a sound, visual or audiovisual recording) concerning a matter relating to the policies, activities and decisions falling within the institution's sphere of responsibility". Most notably, however, besides indicating who has access to documents (as described above), this Regulation lays down the situations in which the institutions can invoke exceptions to this right and sets out the procedure for requesting and providing access to documents.

The Regulation sets out mandatory and balancing restrictions. Mandatory exceptions concern politically sensitive areas, such as public security, defence and military affairs, foreign relations, economic policy, and the protection of personal privacy. In contrast, certain interests—like judicial proceedings (e.g. court deliberations) and business-related confidentiality (e.g. sensitive commercial data)—require a balancing test. This approach seeks to ensure transparency while also safeguarding important legal and policy interests.

As for the formalities, requests for access to documents can be submitted in any written format and in any of the EU's official languages. The request must be specific enough to allow the institution to locate the document in question.

The procedure then works as follows:

Once the request is submitted, the institution must first acknowledge receipt. It then has 15 working days to reply—either by granting full access, partial access, or denying access altogether. In cases of partial or full refusal, the institution is required to explain its reasoning. Although the 15-day deadline can be extended by another 15 days in "exceptional cases", such extensions have become common practice. If access is refused (in whole or in part), the requester can file a confirmatory application within 15 days, asking the institution to review its decision. The institution must again respond within 15 working days, with the same option for a 15-day extension in exceptional circumstances.

Reference Materials

Article 42, European Union Agency for Fundamental Rights (fra.europa.eu)

Ivan Lazarov, “Article 42 – Right of Access to Documents” in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (2nd edn, Hart 2021)

Joana Mendes, “The Principle of Transparency and Access to Documents in the EU: For What, For Whom, and of What?” in Jean-Bernard Auby, Jacqueline Dutheil de la Rochère (eds), *Traité de droit administratif européen* (3th edn, Bruylant 2022)

European Data Protection Supervisor, Transparency in the EU administration: Your right to access documents

European Court of Human Rights, “Factsheet – Access to Internet and freedom to receive and impart information and ideas”

Access Info Europe, Guide on Access to EU Documents

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.

Description

Article 43 of the Charter introduces the right to complain to the European Ombudsperson in cases of maladministration by EU institutions, bodies, offices, or agencies. This right is granted to any natural or legal person residing or established in a Member State.

"Maladministration" refers to a wide range of poor administrative practices. It includes breaches of law, but also broader failures such as unfair procedures, delays, negligence, absence of transparency, or failure to respect fundamental rights.

The Ombudsperson may investigate complaints or act on their own initiative. However, there are clear limits. The right does not apply to actions by the Court of Justice when acting in a judicial capacity. The Ombudsperson also cannot review the conduct of national authorities or challenge the legality of EU laws, which is a task only for the Court of Justice.

The Ombudsperson's decisions are not legally binding, as their role is limited to investigating complaints, issuing recommendations, and highlighting systemic maladministration; they have no power to annul acts or to award compensation.

Article 43 is not absolute, but subject to the limitation clause in Article 52(1) of the Charter. Any limitation on the exercise of this right must be provided for by law, must respect the "essence" of the right, and must be proportionate (namely necessary and genuinely meeting the objectives of general interest or to protect the rights and freedoms of others).

Article 43 complements other provisions such as Articles 20(2)(d) and 228 TFEU and contributes to a culture of fairness in public administration.

Case Law

The Court of Justice of the EU has considered Article 43 in a number of cases, including:

In Lamberts v European Ombudsman (C-234/02), the Court of Justice made clear that EU citizens can, in exceptional cases, claim damages from the European Ombudsperson if a complaint is seriously mishandled. Even though the Ombudsperson has broad discretion in its activity, the Court said that judicial review is still possible and necessary to ensure accountability where rights conferred by EU law are breached. Importantly, the possibility of incurring liability does not threaten the Ombudsperson independence.

The European Ombudsman v Staelen (C-337/15) case involved the Court examining a complaint by Ms Staelen, who believed the European Parliament had treated her unfairly during a selection procedure. The Ombudsperson closed her complaint without properly checking key facts, and the Court eventually found that serious mistakes had been made. These included failing to confirm when her name had been published, wrongly accepting the Parliament's explanation without proof, and not looking into disputed details. As a result, the Court ruled that Ms Staelen had suffered psychological harm and awarded her compensation.

Finally, in IPPT PAN v European Commission and Research Executive Agency (T-805/16), the General Court dealt with a complaint from a Polish research institute after the Commission decided to recover funds from a grant. The Court confirmed that anyone in the EU can submit a complaint to the Ombudsperson, but stressed that this does not mean the Ombudsperson must always complete the inquiry or issue a final decision. In this case, because the institute also took the matter to court, the Ombudsperson closed the complaint, and the Court said that doing so was not a violation of Article 43 of the Charter.

The cases collectively highlight that, while the Ombudsperson plays a key role in promoting good administration by the European institutions, bodies, offices or agencies, their actions can be reviewed, they can be held accountable in serious cases of maladministration, and their discretion is balanced by both legal limits and the judicial system.

Mainstreaming

The Statute of the European Ombudsman is laid down in Regulation 2021/1163 laying down the regulations and general conditions governing the performance of the Ombudsman's duties. This Regulation sets out the general conditions governing the performance of the Ombudsman's duties. It replaced the previous Decision 94/262/ECSC, updating the framework to reflect the Lisbon Treaty and the Charter.

The Statute defines the Ombudsperson as an independent authority, elected by the European Parliament, whose role is to uncover instances of maladministration within the activities of EU institutions, bodies, offices and agencies, with the exception of the Court of Justice acting in its judicial role (Article 1). Maladministration includes unfair procedures, discrimination, abuse of power and lack of transparency. Citizens, residents and legal persons in the Union may lodge complaints within two years of becoming aware of the facts, after first trying to resolve the matter directly with the institution concerned (Article 2).

The Ombudsman's powers cover both reactive investigations based on complaints and proactive own-initiative inquiries in cases of repeated, systemic or serious problems (Article 3). Where maladministration is found, the Ombudsman issues recommendations or solutions, and the institution concerned is obliged to respond within three months. An annual report to the European Parliament ensures accountability and follow-up (Article 4).

To perform these tasks effectively, the Ombudsman has the ability to access documents and information, including, under strict conditions, classified material (Article 5). Confidentiality is required, balanced with the obligation to act openly (Article 9). The Statute also provides special mechanisms for cases involving harassment and the protection of whistleblowers within the EU administration (Articles 2(6) and 8).

Reference Materials

Article 43, European Union Agency for Fundamental Rights (fra.europa.eu)

Ian Harden, "Article 43 – European Ombudsman" in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (2nd edn, Hart 2021)

European Ombudsman, "Special Report of the European Ombudsman in her strategic inquiry concerning the time the European Commission takes to deal with requests for public access to documents" (OI/2/2022/OAM)

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Herwig C. H. Hofmann and Jacques Ziller (eds), *Accountability in the EU: The Role of the European Ombudsman* (Edward Elgar Publishing 2017)

Nikos Vogiatzis, *The European Ombudsman and good administration in the European Union* (Palgrave Macmillan 2018)

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.

Description

Article 44 of the Charter establishes the right to petition the European Parliament as a fundamental right. This right allows individuals and legal persons to bring concerns directly to the Parliament, enhancing democratic participation at the EU level. While this right is already recognised under the Treaties (see Articles 20 and 227 Treaty on the Functioning of the European Union), its inclusion in the Charter underscores its status as a fundamental right within EU law.

In terms of the scope of Article 44, the subject of a petition must relate to areas within the EU's field of activity and must concern the petitioner directly.

The European Parliament's Rules of Procedure expand on the procedural aspects of this right. Petitions must be submitted in an official EU language and can be made in writing or online through a designated web portal. While the core right applies to those meeting the residence or nationality criteria, the Rules also allow, at the Committee on Petitions (PETI) discretion, the submission of petitions by individuals or companies outside these categories.

Once a petition is submitted, it is reviewed for admissibility by PETI. Admissible petitions may lead to further action, such as investigations by the Commission, fact-finding missions in Member States, or resolutions by Parliament. However, the right is procedural in nature and does not guarantee a particular outcome. Participation in the committee's work is also not automatic and may be restricted based on procedural discretion.

Case Law

The Court of Justice of the EU has considered Article 44 in:

In Schönberger (C-261/13 P), the only case on Article 44 of the Charter, the Court highlighted the right to petition as "an instrument of citizen participation in the democratic life of the European Union". In its judgment, the Court found that once a petition is deemed admissible, the European Parliament has broad political discretion in deciding how to act on it — including the option to forward it to another EU institution or department. The only actions that could potentially infringe the right to petition and be subject to legal challenge are those that declare a petition inadmissible or refuse to examine it entirely.

Mainstreaming

In July 2025, changes were suggested by the European Parliament's Transport and Tourism Committee (Transport: enforcement of passenger rights in the Union) to the Commission's Proposal for a regulation amending regulations as regards enforcement of passenger rights in the Union. The Committee's proposed amendments came on the back of numerous petitions to the Parliament raising concerns over fees related to and sizes of airline hand luggage. These petitions themselves — especially Petition 0837/2019 on standard dimensions for carry-on luggage as part of EU Air Passenger Rights —led to a European Parliament resolution on standardised dimensions for carry-on luggage. Hence, in its proposed changes the Committee suggests that there should always be a right to i) an under-the-seat personal item and ii) a piece of hand luggage with dimensions of 100 cm up to 7 kg.

Reference Materials

Article 44, European Union Agency for Fundamental Rights (fra.europa.eu)

European Parliament - The Right to Petition

European Parliamentary Research Service - Right to Petition the European Parliament

European Parliament – Resolution of 9 October 2025 on the deliberations of the Committee on Petitions in 2024

Mats Lindfelt, "Article 44 – Right to Petition" in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (2nd edn, Hart 2021)

Jonathan Tomkin, "Article 44 CFR – Right to Petition" in Manuel Kellerbauer, Marcus Klamert and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary (*OUP 2024)

Nikos Vogiatzis, "The Past and Future of the Right to Petition the European Parliament" (2021) 40 Yearbook of European Law 82

EU Network of Independent Experts on Fundamental Rights, "Commentary on the Charter of Fundamental Rights of the European Union" (2006), accessed on 22 January 2026

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Article 45 – Freedom of movement

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.

Description

Article 45(1) of the Charter guarantees EU citizens the right to move and reside freely within the territory of the Member States — it is both one of the foundational freedoms of EU citizenship and one of the rights flowing from it. This provision restates Article 20(2)(a) and 21(1) of the Treaty on the Functioning of the European Union (TFEU), the latter also stipulating that such right is subject to the limitations and conditions laid down in the Treaties and by the measures adopted to give effect to them. Such limitations and conditions are found in Directive 2004/38/EC on the right of citizens of the Union and their family members to move and reside freely within the territory of the Member States (the Free Movement Directive).

To benefit from Article 45(1), an individual must be an EU citizen — that is, a national of a Member State. While not mentioned in Article 45(1), third-country national family members of EU citizens can also enjoy derived free movement rights, as specified in the Free Movement Directive. To fall within the scope of Article 45(1), a cross-border element is required to establish a sufficient connection with EU law.

The right to free movement can be limited under conditions laid down in the Treaties and secondary legislation, primarily Directive 2004/38 (Free Movement Directive). With a certain degree of simplification, EU citizens have the right of residence for more than three months if the EU citizen is economically active, that is, if he or she is a worker or self-employed person, or if he or she has sufficient resources and comprehensive sickness insurance cover in the host Member State. Restrictions on the right may be imposed for reasons of public policy, public security, or public health. Any restriction must be proportionate and based on individual conduct.

After five years of continuous lawful residence, EU citizens acquire permanent residence and no longer need to comply with the residency requirements of the Free Movement Directive.

Article 45(2) refers to the power granted to the Union by Articles 77, 78 and 79 TFEU. Consequently, the granting of this right depends on the institutions exercising that power.

Case Law

The Court of Justice of the EU has considered Article 45 in a number of cases, including:

M.-A.A. v Direcţia de Evidenţă a Persoanelor Cluj and Others (C-4/23): Under Articles 20 and 21(1) TFEU, read in light of Articles 7 and 45 of the Charter, a Member State is obliged to recognise the gender and name change lawfully acquired by its national in another Member State while exercising the right to free movement and residence there.

WA v Direcţia pentru Evidenţa Persoanelor (C-491/21): Under Article 21 TFEU and Article 45(1) of the Charter, a Member State cannot refuse to issue an identity card to its own national on the sole ground that the latter is residing in another Member State, when such an identity card is issued to the nationals residing in the territory of the Member State concerned. The Court recalled that considerations of an administrative nature cannot justify derogation by a Member State from the rules of EU law, especially where the derogation in question amounts to restricting, or even preventing, the exercise of one of the fundamental freedoms guaranteed by the Treaty.

Alimanovic (C-67/14): Under the Free Movement Directive, a Member State can refuse social assistance benefits to EU citizens residing as jobseekers who lost their worker status without carrying out an individual assessment, even where the same social assistance benefits are granted to the Member State's nationals in the same situation.

Dano v Jobcenter Leipzig (C-333/13): Economically inactive citizens may be denied social assistance if they do not meet residency conditions set out in Directive 2004/38. Equal treatment under said Directive is conditional on lawful residence.

Ruiz Zambrano (C-34/09): A Member State must grant a residence right to the third-country national parents of dependent EU citizen children who have never exercised their right to free movement, if the refusal would compel those children to leave the EU, thus depriving them of the genuine enjoyment of the substance of their rights as EU citizens. The case is not based on the right to free movement, but on Article 20 TFEU establishing EU citizenship.

Zhu and Chen (C-200/02): An EU citizen child with sufficient resources and comprehensive sickness insurance has a residence right in the host Member State, and this right extends to his or her third-country national parent as a primary carer.

Coman (C-673/16): Where, during the genuine residence of an EU citizen in the host Member State, in accordance with the Free Movement Directive, family life is created or strengthened in that Member State, the effectiveness of Article 21(1) TFEU requires that that citizen's family life in that Member State may continue when he returns to his or her Member State of nationality, through the grant of a derived right of residence to the third-country national family member who resided with the EU citizen in the host Member State accordance with the Directive. Otherwise, the EU citizen could be discouraged from exercising free movement by leaving the MS of nationality in the first place.

Mainstreaming

Mainstreaming the right to freedom of movement under Article 45(1) of the Charter is essential to ensure that legislative and policy initiatives at both EU and national levels comply with fundamental rights. This involves systematically assessing how policy options may affect EU citizens' ability to move and reside freely across Member States, with particular attention to potential legal or practical barriers.

Policy initiatives in the area of free movement of persons typically aim to facilitate the enjoyment of Article 45(1) of the Charter.

An example of Charter-based mainstreaming can be seen in the EU Digital COVID Certificate Regulation (2021/953), adopted to facilitate the re-establishment of free movement during the COVID-19 pandemic. When proposing that Regulation (COM(2021) 130 final), the Commission noted that the initiative positively affected the fundamental right of freedom of movement and residence under Article 45 of the Charter. According to the Commission, it did so by providing citizens with interoperable and mutually accepted certificates on COVID-19 vaccination, testing and recovery that they could use when travelling during the pandemic. Where Member States waived certain restrictions on free movement for persons in the possession of proof of vaccination, test or recovery, the EU Digital COVID Certificate allowed citizens to profit from these exemptions. As more scientific data, notably on the effects of vaccination against SARS-CoV-2 infection, become available, an interoperable framework of health certificates allowed Member States to lift restrictions in a coordinated manner.

Another example is Regulation 2025/1208 on identity cards and residence documents. In the proposal (COM(2024) 316 final), the Commission noted that the initiative had a positive impact on EU citizens' fundamental right to free movement and residence under Article 45 of the Charter by addressing difficulties in recognition and insufficient security of both identity cards and residence documents.

Reference Materials

Article 45, European Union Agency for Fundamental Rights (fra.europa.eu)

Eleanor Spaventa, “Article 45 – Freedom of Movement and of Residence” in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (2nd edn, Hart 2021)

Commission notice, Guidance on the right of free movement of EU citizens and their families

European Union Agency for Fundamental Rights, Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level

University of Oxford Podcasts, Free Movement

EU Citizenship Report 2023 (COM(2023) 931 final)

EU Citizenship Report 2020 Empowering citizens and protecting their rights

Katarina Hyltén-Cavallius, *EU Citizenship at the Edges of Freedom of Movement* (Hart Publishing 2020)

Susanne K. Smidth, Michael Blauberger and Dorte Sindbjerg Martinsen, “Free Movement and Equal Treatment in an Unequal Union” (2018) 25(10) Journal of European Public Policy 1391

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.

Description

Article 46 of the Charter provides for the protection of EU citizens in third countries where their own Member State of nationality is not represented by the diplomatic or consular authorities of any EU Member State. It is one of the rights flowing from EU citizenship. The EU citizens concerned enjoy a right to receive protection on the same conditions as the nationals of the EU Member State providing assistance.

This provision builds upon Article 20(2)(c) and Article 23 of the Treaty of the Functioning of the European Union, which establish the treaty legal basis for consular and diplomatic protection of EU citizens in third countries. You can find more information on these provisions in the proposed reading materials.

The right to consular protection is implemented in Council Directive 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented EU citizens in third countries and Council Directive 2019/997 on the issuance of EU Emergency Travel Documents.

There is no EU legislation on “diplomatic protection”, which is the invocation by a State of the responsibility of another State for an injury caused to its nationals.

Article 46 of the Charter has not yet been interpreted by the Court of Justice of the European Union. International legal frameworks relevant to this right are the Vienna Convention on Diplomatic Relations, the Vienna Convention on Consular Relations, and the International Law Commission Draft Articles on Diplomatic Protection.

Case Law

The Court of Justice of the European Union is yet to be confronted with cases requiring the interpretation of Article 46 of the Charter. While it is a right well-grounded in EU Treaties, its implementation has not been addressed by the Court to date.

Mainstreaming

Article 46 is further mainstreamed in EU policy through Directive 2015/637 on the coordination and cooperation measures to facilitate consular protection for unrepresented citizens of the Union in third countries. That Directive defines a number of crucial concepts such as when an EU citizen is to be considered as not represented. Article 6 of the Directive provides that a Member State is not represented in a third country “if it has no embassy or consulate established there on a permanent basis, or if it has no embassy, consulate or honorary consul there which is effectively in a position to provide consular protection in a given case”. Recital 8 of the Directive explains further the “notion of absence of representation should be interpreted with a view to ensuring the effectiveness of the right of unrepresented citizens to be protected by another Member State's embassy or consulate in a non-discriminatory way, taking into account the circumstances of each particular case”.

In addition, the Directive clarifies how assistance is to be coordinated between EU Member States, including the role of EU Delegations. Finally, it lays down rules for the reimbursement of the costs of consular protection. The help that may be provided by embassies/consulates of (other) EU Member States include assistance in cases of:

- Lost or stolen passport or ID card: the embassy can issue emergency travel documents – single-journey documents intended to allow EU citizens to return home.
- Arrest or detention: once contacted, the embassy may provide information on the local legal system or help EU citizens find a lawyer.
- Being victim of a crime: someone from the embassy may assist EU citizens and advise on the next steps.
- Serious accident or illness: staff may help contact EU citizen's insurance company, family, or friends if the EU citizen ends up in hospital.
- Relief and repatriation in case of an emergency: the embassy may be able to help coordinate evacuations, for example in case of a conflict, a natural disaster or civil unrest.
- Death: staff may help notify next of kin and help EU citizens register a death.
- When unrepresented EU citizens seek help from the embassy or consulate of another EU Member State, they must prove their identity by showing a passport or identity card. If their documents have been stolen or lost, their nationality can be proven by other means, including by verification with the authorities of their EU Member State of nationality.

Unrepresented citizen should be duly taken into account and fully assisted in crisis situations, where a clear division of responsibilities and coordination are of paramount importance. The Consular Crisis Management Division of the European External Action Service assists in coordinating action in times of crisis.

Also relevant is Council Directive 2019/997 establishing an EU Emergency Travel Document. That Directive sets out rules and procedures for obtaining an EU Emergency Travel Document and establishes a uniform format to be used. The EU Emergency Travel Document is a travel document issued by an EU Member State to an unrepresented citizen in a third country for a single journey to the citizen's Member State of nationality or residence, or exceptionally, to another destination. It is issued to unrepresented citizens whose passports or travel documents have been lost, stolen or destroyed, or can otherwise not be obtained within a reasonable time.

In December 2023, the Commission put forward a proposal to amend Council Directive 2015/637, which seeks to address lessons learned from recent crisis, including the COVID-19 pandemic. The proposal aims to clarify when an EU citizen is to be considered as "unrepresented" and to ensure that the cooperation between consular authorities and EU delegations is streamlined. The proposal would, if adopted, allow EU delegations to provide consular protection to unrepresented EU citizens at the request and on behalf of EU Member States. The proposal would also expand the provisions on crisis preparedness and response, using lessons learnt from recent crises. Finally, the proposal would streamline the rules on reimbursement, allowing assisting EU Member States to charge assisted EU citizens directly. The special legislative procedure is currently ongoing.

Reference Materials

Article 46, European Union Agency for Fundamental Rights (fra.europa.eu)

Eileen Denza, "Article 46 – Diplomatic and Consular Protection" in Steve Peers, Tamara Hervey, Jeff Kenner and Angela Ward (eds), *The EU Charter of Fundamental Rights: A Commentary* (2nd edn, Hart 2021)

Treaty on the Functioning of the European Union, Articles 20 and 23

Consular Protection Directive

Proposal to amend the Consular Protection Directive

Report on the implementation of the Consular Protection Directive

Directive on an EU Emergency Travel Document

Technical specifications for the EU Emergency Travel Document

1996 emergency travel document Decision

Communication on consular protection 2011

Action Plan of December 2007

Green Paper of November 2006

Vienna Convention on Consular Relations, 1963

Vienna Convention on Diplomatic Relations, 1961

JUSTICE

Article 47 – The 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.

<u>Description</u>

Article 47 of the Charter of Fundamental Rights of the European Union guarantees the right to an effective remedy and to a fair trial. It applies to everyone, natural or legal persons and both EU and non-EU nationals. This right ensures that any violation of rights protected under EU law can be challenged before a court or tribunal.

Article 47 of the Charter is closely linked to Article 19 TEU, which imposes a structural obligation on Member States to maintain a system of effective judicial protection. The requirements laid down in Article 47 - such as independence, impartiality and access to a tribunal - inform the interpretation of Article 19 TEU. Still, both provisions are clearly distinct: Article 19 TEU may apply even where the Charter is not directly applicable, as long as national courts may be called upon to apply or interpret EU law.

Article 47 requires that individuals have access to an "independent and impartial tribunal established by law". Independence requires that the tribunal or court is protected against external pressures that would undermine its independence, including, for instance, disciplinary regimes and the appointment or dismissal of judges. Courts or tribunals must be impartial: judges themselves must show no personal prejudice or bias, and the composition or establishment of the tribunal must also show no indication of bias or partiality to one side. Finally, the requirement that the tribunal be established by law means that it must have a proper legal basis in advance and cannot have been created ad hoc to deal with a specific dispute.

Article 47 also guarantees the the possibility of being advised, defended and represented. To support this for those without the means of otherwise doing so, Article 47 provides that legal aid should be available where its absence would deny access to justice.

The right is not absolute and, under the conditions laid down by Article 52(1) of the Charter, can be limited as long as this is provided for by law, the principle of proportionality and the essence of the right is respected. Article 47 has the same scope and meaning as Articles 13 and 6(1) ECHR, though it also applies to certain administrative cases. The right to an effective remedy enshrined in Article 47 of the Charter is closely related to the principle of national procedural autonomy, which includes the principles of equivalence (national procedural rules must be as favourable as those for similar domestic actions) and effectiveness (rules must not make it excessively difficult to exercise EU rights). The provision also implies that legal aid should be available where its absence would deny access to justice. While Article 47 guarantees access to justice, it does not automatically create a right to appeal.

Case Law

The Court of Justice of the EU has considered Article 47 in a number of cases, including:

In DEB (C-279/09), the Could held that it is for the national court to ascertain whether the conditions for granting legal aid constitute a limitation on the right of access to the courts. The conditions must pursue a legitimate aim, meet the principle of proportionality, and take into consideration the circumstances of the case including subject-matter, importance of what is at stake, complexity of the applicable law and the capacity of the applicant to represent himself effectively.

In Kadi and Al Barakaat (Joined Cases C-402/05 P & C-415/05 P), the Court ruled that the individual subject to UN sanctions was entitled to effective judicial protection and that the EU had a duty to ensure his rights were not infringed.

In ZZ v Secretary of State for the Home Department (C-300/11), in a case concerning the exclusion of an EU citizen from another Member State on the grounds of national security, the Court stated that in exceptional cases and subject to review in a national court, a Member State can prevent a Union citizen from being informed of reasons to expel him. The limitation is conditional on the Member State providing appropriate procedural mechanisms capable of guaranteeing a satisfactory degree of fairness in the procedure in order to ensure it is proportionate to the legitimate aim of protecting national security.

In Associação Sindical dos Juízes Portugueses (C-64/16), concerning the interpretation of Article 47 of the Charter and Article 19(1) TEU, the Court held that the existence of effective judicial review designed to ensure compliance with EU law is of the essence of the rule of law as stated in Article 2 TEU, and Member States must ensure that their courts and tribunals meet the requirements of effective judicial protection. The independence of the court or tribunal is essential, and is one of the quintessential requirements linked to the fundamental right to an effective remedy.

In Commission v Poland (C-791/19), the Court held that the right to an effective remedy presupposes the independence of bodies which might be called upon to decide on questions concerning the interpretation or application of EU law. Any disciplinary regime for judges must therefore provide the necessary guarantees in order to prevent any risk of it being used as a system of political control of the content of judicial decisions.

In Asociaţia 'Forumul Judecătorilor din România' (Associations of judges) (C-53/23) the Court held that the guarantees of independence and impartiality required under EU law presuppose rules that are such as to dispel any reasonable doubt, in the minds of individuals, in particular as to the neutrality of the body in question with respect to the interests before it.

In Vivacom Bulgaria 'EAD' (C-369/23), the CJEU ruled on the interpretation of Article 47 paragraph 2, along with the interpretation of Article 19(1) TEU. It held that the Articles do not preclude national legislation under which a court hears at last instance a case on a point of law in which that court has the status of defendant, relating to the liability of the State for an alleged infringement of EU law on account of a judgment delivered by that court, provided that that national legislation and the measures taken to deal with that case are such as to dispel any reasonable doubt in the minds of individuals as to the independence and impartiality of the court concerned.

The European Court of Human Rights has issued a number of rulings which inform the interpretation of Article 47 of the Charter, including:

In ARB SHPK and Others v Albania (39860/19) the Court ruled excessive delays in criminal and civil litigation violated the right to fair trial.

In Juszczyszyn v Poland (35599/20),the Court found that there were grave irregularities in appointment of judges to the Supreme Court's Disciplinary Chamber which caused the very essence of the right to a "tribunal established by law" to be impaired, and also compromised the independence and impartiality of the Disciplinary Chamber.

In Georgiou v Greece (57378/18) the Court held that the national court's failure to refer a question to the Court of Justice of the European Union constituted a violation of the applicant's right to a fair trial. The Court had not examined the merits of his request, nor provided him with any reasons for the refusal.

In Budayeva and Others v Russia (15339/02, 21166/02, 20058/02, 11673/02 and 15343/02), the Court stated that the protection afforded by Article 13 ECHR does not go so far as to require any particular form of remedy, in view of that margin of appreciation afforded to Contracting States.

Mainstreaming

Directive 2010/64/EU on the right to interpretation and translation lays down common minimum rules to be applied in criminal proceedings. The aim of the Directive is to ensure the right of suspected or accused persons to interpretation and translation in criminal proceedings with a view to ensuring their right to a fair trial so that they can understand and respond to the charges laid against them.

Directive 2016/1919 on legal aid for suspects and accused persons in criminal proceedings and for requested persons in European arrest warrant proceedings. This Directive ensures that suspects and accused persons who lack sufficient resources have access to publicly funded legal assistance, thereby helping to make the right to an effective remedy and to a fair trial practically effective rather than merely formal.

Directive 2016/800 on procedural safeguards for children who are suspects or accused persons in criminal proceedings establishes procedural safeguards to ensure that children who are suspects or accused persons in criminal proceedings, are able to understand and follow those proceedings and to exercise their right to a fair trial.

The following directives are also relevant, and discussed in more detail in Article 48 of the Charter:

– Directive 2012/13/EU on the right to information in criminal proceedings
– Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings
– Directive 2016/343 on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings

Further relevant legal acts include:

Directive 2014/104/EU governing actions for damages for infringements of the competition law of the Member States and of the European Union

Reference Materials

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Council of Europe, Guide on Article 13 ECHR

Council of Europe, Guide on Article 6 ECHR (civil limb)

Council of Europe, Guide on Article 6 (criminal limb)

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.

Description

The presumption of innocence, and the requirement that any person charged with an offence be afforded certain rights of defence, are considered essential components of a fair and just legal system. Both rights are foundational to the right to a fair trial and are also guaranteed under international human rights law. The rights enshrined in Article 48 of the Charter uphold basic tenets of human dignity. They protect individuals from wrongful or unfair conviction or penalty by ensuring that accused persons are not treated as guilty (either in court or in public) before a court makes a final judgment about their case, and by guaranteeing minimum protections for accused persons during criminal investigations and prosecutions.

Article 48 of the Charter corresponds with Article 6 paragraphs 2 and 3 of the European Convention on Human Rights, referred to as the "criminal limb" of the right to a fair trial. The rights protected under Article 48 have the same meaning and scope as those guaranteed under the Convention in accordance with Article 52(3) of the Charter. The rights of the defence under paragraph 2 of Article 48 include an accused person's rights to be informed promptly and in detail of the accusation against her or him; to have adequate time and facilities to prepare a defence; to defend her- or himself in person or through legal assistance of her or his own choosing or, if she or he has insufficient means to pay for legal assistance, to be given it free (when the interests of justice require); to examine witnesses against her or him and to obtain the attendance and examination of witnesses on her or his behalf; and to have the free assistance of an interpreter if required.

While Article 6(2) and (3) of the European Convention on Human Rights relate specifically to criminal offences, Article 48 has been applied more broadly by the Court of Justice of the European Union. This has included administrative proceedings and particularly in the context of EU competition law. The scope of the presumption of innocence and rights of the defence under the Charter includes natural as well as legal persons including companies or incorporated organisations.

Like most other Charter rights, the presumption of innocence and rights of the defence are not absolute. They can be limited as described under Article 52(1) of the Charter – that is, as provided for by law and in a manner that ensures the essence or core of the right is protected. Any limitation must also be necessary and must genuinely meet the objectives of general interest recognised by the EU, or the need to protect the rights and freedoms of others.

Case Law

The Court of Justice of the EU has considered Article 48 in a number of cases, including:

In PI v Landespolizeidirektion Tirol (C-230/18), it was held that the requirements that authorities pay due attention to observations submitted by a person in an administrative proceeding, examine carefully and impartially all the relevant aspects of an individual case, and give a detailed statement of reasons for their decision that is sufficiently specific and concrete to allow the person concerned to understand the reasons for the refusal of their request, are corollaries of the principle of respect for the rights of defence under Article 48.

In DB v Commissione Nazionale per le Società e la Borsa (C-481/19), the Court held that the safeguards afforded by Article 48 include the right to silence not only in the context of criminal proceedings, but also in proceedings which may lead to the imposition of administrative sanctions of a criminal nature, or result in criminal liability.

In the case of IS (C-564/19), the Grand Chamber found that the rights of the defence preclude a person from being tried *in absentia* when, on account of inadequate interpretation, she or he has not been informed, in a language which she or he understands, of the accusation against her or him or where it is impossible to ascertain the quality of the interpretation provided and therefore to establish that she or he has been informed, in a language which she or he understands, of the accusation against her or him.

The European Court of Human Rights has made a number of rulings, which inform the interpretation of Article 48 of the Charter, including:

In Allen v United Kingdom (25424/09), the Grand Chamber held that the presumption of innocence under Article 6(2) of the Convention entails requirements in respect of the burden of proof, legal presumptions of fact and law, the privilege against self-incrimination, pre-trial publicity and premature expressions, by the trial court or by other public officials, of a defendant's guilt. It also has a general aim of protecting individuals who have been acquitted of a criminal charge, or in respect of whom criminal proceedings have been discontinued, from being treated by public officials and authorities as though they are in fact guilty of the offence charged.

In Murray v United Kingdom (18731/91), the Grand Chamber found that denying the applicant access to a lawyer for a period of 48 hours after he was detained by police amounted to a breach of his rights of defence under Article 6(3), taken in conjunction with his right to a fair trial under Article 6(1).

Mainstreaming

Directive 2010/64/EU on the right to interpretation and translation in criminal proceedings lays down rules concerning the right to interpretation and translation in criminal proceedings and proceedings for the execution of a European arrest warrant, in explicit recognition of the importance of safeguarding the rights of suspected or accused persons.

Directive 2012/13/EU on the right to information in criminal proceedings lays down rules concerning the right to information of suspects or accused persons, and persons subject to a European arrest warrant, in relation to their rights in criminal proceedings and to the accusation against them, thereby furthering respect for the rights of the defence under Article 48.

Directive 2013/48/EU on the right of access to a lawyer in criminal proceedings and in European arrest warrant proceedings, and on the right to have a third party informed upon deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty further strengthens the procedural rights afforded to accused persons in criminal proceedings by laying down minimum rules concerning the rights to have access to a lawyer, to have a third party informed of the deprivation of liberty and to communicate with third persons and with consular authorities while deprived of liberty, thereby promoting the application of Article 48 of the Charter.

Directive 2016/343/EU on the strengthening of certain aspects of the presumption of innocence and of the right to be present at the trial in criminal proceedings strengthens, substantiates and elaborates on the presumption of innocence and the right of accused persons to be present at trial during criminal proceedings, in direct recognition of the rights protected under Article 48 of the Charter.

This measure was preceded by an Impact assessment accompanying the document Proposal for measures on the strengthening of certain aspects of the presumption of innocence and of the right to be present at trial in criminal proceedings, which considered various measures to strengthen the presumption of innocence and the right to be present at trial in criminal proceedings. It was noted that the objects of this initiative were strictly linked to Article 48 of the Charter, in terms of guaranteeing a high standard of protection of fundamental procedural rights in criminal proceedings for EU citizens. The impact assessment outlined various policy options, from taking no action at the EU level (maintaining the status quo), to adopting various legislative measures. It concluded that without EU action, there would be insufficient protection of the presumption of innocence and right to defence, while the remaining policy options were assessed as likely having a positive impact on the practical application of Article 48.

The Impact assessment accompanying the document Proposal for a Directive of the European Parliament and of the Council on the protection of persons reporting on breaches of Union law considered a proposal for a directive to strengthen whistleblower protections, with the overall objective of addressing the underreporting of breaches of EU law leading to serious harm to the public interest. The impact assessment observed that affording a high level of protection to other fundamental rights, in particular the protection of privacy and personal data, in the proposed directive could negatively interfere with the rights protected under Article 48. It concluded that a balanced approach to maintaining the protection of Article 48 and establishing safeguards for reporting and for reported persons to avoid unfair treatment or reputational damages was necessary.

Reference Materials

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European Court of Human Rights, Guide on Article 6: Right to a Fair Trial (Criminal Limb)

Human Rights Committee, General Comment No. 13: Article 14 (Administration of Justice)

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 that which 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.

Description

Article 49 of the Charter reflects a central pillar of the rule of law and of criminal justice systems across Europe by codifying the principle of legality. Article 49 of the Charter has the same meaning and scope as Article 7 ECHR, which implicates that Article 49 shall be interpreted in light of the case law of the ECtHR. It also means that, by virtue of Article 15 ECHR, this right is one that cannot be derogated from (meaning States cannot suspend its application) even in times of emergency.

The principle of legality requires that crimes and penalties are defined in and prescribed by law, which must be: (i) clear (define with sufficient precision the acts constituting an offence, as well as the attached penalty), (ii) accessible (individuals must be put in the position to know the law) and (iii) foreseeable (meaning that the judicial interpretation of the law may evolve, provided that such development may be reasonably expected to take place). It follows from the principle of legality that individuals must have the ability of assessing in advance if a given action is a criminal offence, and of knowing what maximum punishment such action may entail. Moreover, the principle requires that that criminal law must not apply retroactively (to the detriment of the accused).

Under the principle of legality, the law must be accessible and foreseeable – however, where appropriate and if need be, individuals shall rely on the interpretation given by courts and on professional legal advice. Any extensive interpretations of criminal law through analogy are not allowed if they go to the detriment of the accused.

Importantly, offences that are considered crimes under international law (war crimes, crimes against humanity etc.) can be tried even if domestic law at the time does not specifically make provision for them. The relevance in the context of EU Law and its application (scope of application of the Charter) is limited.

Additionally, Article 49 requires Member States to apply the more lenient penalty in cases where the penalty for the crime has been reduced during the time in between the commission of the crime and the decision by the Court (*lex posterior mitius*). This does not extend to final decisions already been issued (*res judicata*).

Article 49(3) requires proportionality of penalties, meaning that the penalties prescribed must commensurate with - and not exceed - the gravity of the offence committed.

Case Law

The interpretation of Article 49 is informed by the case law of the European Court of Human Rights on Article 7 of the European Convention on Human Rights, which establishes the requirements of accessibility and foreseeability of criminal law and the prohibition of retroactive criminal liability, notably in Kokkinakis v Greece (14307/88) and the recognition of the principle of *lex mitior* in Scoppola v Italy (No. 2) (10249/03). Another leading case is Del Rio Prada v Spain (42750/09).

The Court of Justice and General Court of the EU have considered Article 49 in a number of cases, including:

In Schenker (T-265/12) the General Court applied Article 49(3) in competition law and held that fines must be proportionate to the infringement, requiring the Commission to assess gravity on the basis of factors such as the nature, scope and economic impact of the conduct and to apply those factors consistently.

In Taricco and Others (C-105/14) the Court of Justice held that national limitation rules preventing effective punishment of serious VAT fraud may have to be disapplied and that such disapplication does not infringe Article 49, since limitation periods are procedural and their disapplication does not in itself impose harsher penalties.

In FranceAgriMer v Hubert Clergeau and Others (C-115/17) the same Court clarified that the retroactive application of a more lenient criminal law under Article 49(1) does not apply where legislative changes affect only the conditions for eligibility of goods but not the punishability of the fraudulent conduct itself.

In A (C-35/20) the Court held that national penalties for Union citizens crossing borders without valid identification must respect the proportionality requirement of Article 49(3), and that a fine amounting to 20% of the offender’s net income for such an offence was disproportionate.

In G. ST. T. (C-655/21) the Court ruled that although Member States need not draw a strict distinction between administrative and criminal offences, a mandatory minimum custodial sentence of five years for trademark infringements violates the proportionality requirement of Article 49.

In BAJI Trans (C-544/23), the Court clarified the meaning of “final” conviction, stating that a conviction cannot be regarded as final if it may be the subject of an ordinary appeal. The ruling also clarifies the scope and application of the *lex posterior mitius* principle, ensuring that individuals may be able to benefit from it even if seemingly only an “administrative/regulatory offence” is at stake.

Mainstreaming

Directive 2009/52/EC providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals refers to Article 49 in relation to sanctions against employers of illegally staying third-country nationals and emphasises that criminal offences and penalties must respect the principles of legality and proportionality.

Directive 2011/36/EU on preventing and combating trafficking in human beings and protecting its victims refers to Article 49 when establishing minimum rules on criminal offences and sanctions for trafficking in human beings, requiring compliance with the principles of legality and proportionality.

Directive 2011/93/EU on combating the sexual abuse and sexual exploitation of children and child pornography similarly refers to the principles of legality and proportionality of criminal offences and penalties, which are enshrined in Article 49.

Directive 2014/57/EU on criminal sanctions for market abuse (market abuse directive) refers to Article 49 when establishing criminal sanctions for insider dealing, unlawful disclosure of inside information and market manipulation.

Directive (EU) 2018/1673 on combating money laundering by criminal law recalls Article 49 in defining criminal offences and sanctions for money laundering, including the requirements of legality, proportionality and foreseeability in criminal law.

Directive (EU) 2024/1203 on the protection of the environment through criminal law refers to the Charter in establishing criminal offences and penalties for environmental crimes and requires investigative and enforcement measures to comply with the principle of proportionality.

Regulation (EU) 2021/784 on addressing the dissemination of terrorist content online implicitly reflects Article 49 by requiring that penalties for non-compliance with obligations relating to terrorist content online be proportionate.

Regulation (EU) 2022/2065 on a Single Market For Digital Services refers to the Charter in the context of enforcement measures against intermediary services, which must respect the principle of proportionality.

Regulation (EU) 2023/1543 on European Production Orders and European Preservation Orders for electronic evidence in criminal proceedings and for the execution of custodial sentences following criminal proceedings recalls the Charter, including the principles of legality and proportionality of criminal offences and penalties, in the context of cross-border access to electronic evidence.

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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.

Description

Article 50 of the EU Charter of Fundamental Rights guarantees that no one should be subject twice to criminal proceedings or criminal sanctions for the same criminal offence (*ne bis in idem* principle). In other words, it prohibits someone from being tried or punished when they have already been subject to criminal proceedings regarding that very specific criminal offence, and these proceedings are definitely concluded, whether resulting in an acquittal or conviction.

Article 50 may apply to a range of legal contexts. For example, it may be triggered against attempts to prosecute or sanction a single criminal act in a single jurisdiction. But, contrary to Article 4 Protocol 7 of the European Convention on Human Rights, Article 50 is not limited to a single state's jurisdiction. It applies to criminal proceedings or sanctions taking place across two or more jurisdictions or legal orders. This could be the case when two EU Member States, an EU Member State and an EU institution, or an EU institution and a third state initiate proceedings against the same person for the same criminal offence.

For Article 50 to apply, the proceedings or sanctions must be against the same person, whether natural or legal. Article 50, thus, does not apply if successive proceedings and penalties are initiated against a company and its legal representatives, as they have different legal identities.

Article 50's material scope is limited as it protects against being tried or sentenced twice for the same offence in *criminal proceedings*. Someone may, therefore, be subject to criminal proceedings and an action of a different nature (e.g. a disciplinary action) for the same act. The Court of Justice of the EU set three criteria to determine what constitutes "criminal" proceedings based on (i) the legal classification of the offence under domestic law, (ii) the nature of the offence, and (iii) the degree of severity of the sanction that the person is liable for. It should also be noted that Article 50 is not absolute and can be limited in line with Article 52(1) of the Charter.

Case Law

The Court of Justice of the EU has considered Article 50 in a number of cases, including:

In Joined cases Gutmann v Commission (C-18/65 and C-35/65), related to repeated disciplinary proceedings against an employee of a Community institution, the Court declared that the *ne bis in idem* principle prohibits the use of successive disciplinary procedures based on general complaints related to an indeterminate and unverifiable number of acts which can therefore not be distinguished.

In Bonda (C-489/10), the Court held that the cumulation of administrative and criminal sanctions against a farmer in the context of the common agricultural policy was in line with Article 50. In this case, a farmer had his agricultural subsidies reduced due to having submitted incorrect declarations and was threatened with criminal proceedings for subsidy fraud. To determine whether the administrative proceedings were criminal in nature, the Court applied the European Court of Human Rights (ECtHR) three Engel criteria (legal classification, nature of the offence, severity of the potential penalty). The Court found that the offence is not classified as criminal under EU law, that the aim of those measures is not punitive but rather to protect the management of EU funding, and that the effect of the sanction is to prevent the farmer from obtaining subsidies. Overall, the Court considered that the nature and severity of the sanction did not make it criminal in nature, as a consequence of which Article 50 of the Charter is not applicable

In Åkerberg Fransson (C-617/10), a fisherman was imposed tax penalties for incorrectly reporting his income to the tax authorities, and later faced criminal prosecution for tax evasion for the same act. The Court clarified that Article 50 of the Charter does not preclude a Member State from imposing, for the same acts of non-compliance with declaration obligations in the field of VAT, a combination of tax penalties and criminal penalties. In order to ensure that all VAT revenue is collected and, in so doing, that the financial interests of the European Union are protected, the Member States have freedom to choose the applicable penalties. These penalties may therefore take the form of administrative penalties, criminal penalties or a combination of the two. It is only if the tax penalty is criminal in nature for the purposes of Article 50 of the Charter and has become final that that provision precludes criminal proceedings in respect of the same acts from being brought against the same person.

In Menci (C-524/15), the applicant received an administrative penalty from Italian tax authorities for failing to pay high amounts of VAT. When this decision was final, he was subject to criminal prosecution. The Court noted that it appeared that the national legislation allowed criminal proceedings to be brought against a person committing an offence of failing to pay VAT due on the basis of their annual tax return even after the imposition on that person, in respect of the same act, of a final administrative penalty of a criminal nature. Such duplications of proceedings and penalties were found to constitute a limitation of Article 50 of the Charter. However, the Court held that the combination of administrative and criminal proceedings for tax offences in the context of the VAT directive did not violate the *ne bis in idem* principle, as could be justified in line with Article 52(1) of the Charter. The Court considered that the measures met the objective of general interest of protecting the financial interests of the EU by ensuring that all VAT due across the Member States is collected, while ensuring that the duplication of proceedings and penalties pursued complementary objectives, remained strictly necessary, and was proportionate to the seriousness of the offence.

Article 50 of the Charter correlates with Article 4 of Protocol No. 7 of the ECHR. The following ECHR case law is therefore helpful in understanding its application:

In Sergey Zolotukhin v Russia (14939/03), the applicant had been sentenced to administrative sanctions for his disorderly conduct in the police station. Criminal prosecution was later initiated against the applicant for the same acts, and he was found guilty of disorderly conduct and of insulting a state official while the official was drafting the administrative report and thereafter. The ECtHR considered that the applicant had received a final conviction following the administrative procedure. The prosecution of a second offence in relation to the same conduct and encompassing the same facts as the first conviction concerned essentially the same offence and was therefore a violation of article 4 of Protocol No. 7.

In Mihalache v Romania (54012/10) the ECtHR ruled that the reopening of a case when new evidence emerged or when there was a fundamental defect in the previous proceedings is not a violation of Article 4 of Protocol No. 7. This case concerned a motorist who refused to provide biological samples to determine his blood alcohol level as requested by the police, which is a criminal offence. The prosecutor who received the case for consideration concluded that the acts were not sufficiently serious to warrant criminal proceedings. However, a higher-ranking prosecutor reviewed the decision and, considering that it was taken in error, reinstated the criminal proceedings.

Mainstreaming

Directive 2017/1371 on the fight against fraud to the Union’s financial interests by means of criminal law defines the fraud and other criminal offences that affect the EU’s financial interests

(Articles 3 and 4). The scope of this directive includes cross-border criminal offences that may involve multiple jurisdictions. The directive requires particular caution from Member States when transposing it into domestic law and implementing it, to ensure that the *ne bis in idem* principle is fully respected.

Directive 2014/41/EU on the European Investigation Order in criminal matters allows the executing authority to refuse the recognition or execution of a European Investigation Order if it would be contrary to the *ne bis in idem* principle (art. 11(1)(d)).

Directive 2014/57/EU on criminal sanctions for market abuse (market abuse directive) requires Member States to respect the *ne bis in idem* principle when implementing domestic law transposing this directive. In particular, the market abuse directive highlights that imposing criminal sanctions for offences covered by this directive and administrative sanctions in line with the market abuse regulation (Regulation (EU) No 596/2014 on market abuse) may breach the principle contained in Article 50.

Council Framework Decision on the European Arrest Warrant and the surrender procedures between Member States (2002/584/JHA) sets a simplified judicial surrender procedure between EU Member States to facilitate the prosecution or execution of custodial sentences or detention orders. It incorporates the *ne bis in idem* principle by requiring the executing Member State to refuse to execute a European Arrest Warrant if it is informed that the requested person has received a final conviction or acquittal by a Member State regarding the same acts (Article 3(2)). Additionally, the *ne bis in idem* principle is incorporated in the grounds for optional non-execution. Indeed, the executing state may refuse to execute a European Arrest Warrant when it is already prosecuting the requested person for the same acts or when it has decided not to prosecute, to halt proceedings, or has passed a final judgement against the requested person for the same acts (Article 4(3)). Lastly, the executing state may refuse to execute the request when it is informed that the requested person has received a final judgment regarding the same act by a third state (Article 4(5)).

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II

Part II: Guide to assessing impact on fundamental rights

Part II: Guide to assessing impact on fundamental rights

1. Introduction

New legislative measures may have implications for rights protected under the Charter of Fundamental Rights (hereafter the Charter), whether positive or negative, direct or indirect. For this reason, potential impacts on fundamental rights are increasingly considered at an early stage of policy development through an impact assessment (hereafter IA), "a process comprising a structured analysis of policy problems and corresponding policy responses."[7] The central objective of IAs is to ensure that they provide policymakers with the information necessary to make evidence-based choices between policy options, taking into account both their advantages and disadvantages, including in terms of fundamental rights. A detailed and well-structured impact assessment thus serves as a decision-making tool that strengthens the substance, legitimacy, and legality of the measure ultimately adopted and brings a number of practical advantages.

First, respect for fundamental rights under the Charter is a legal requirement with which Member States must comply when implementing EU law.[8] Accordingly, when national authorities transpose EU legislation, they must ensure that national measures are compatible with EU fundamental rights standards. Thus, assessing fundamental rights impacts in IAs is one of the tools available to national legislators to help preventing the adoption of legislation that might be potentially incompatible with the Charter, thereby reducing the risk of annulment by national courts or the initiation of infringement proceedings by the Commission. Such outcomes create high levels of legal uncertainty for public bodies, companies and citizens, require additional legislative amendments, and damage institutional credibility.

Second, IAs improve the overall effectiveness of policy measures by helping policymakers identify unintended consequences that may undermine the achievement of policy objectives.

Third, IAs help policymakers consider alternative measures that achieve the policy objectives with fewer unnecessary intrusions into fundamental rights or impacts on specific groups. In this regard, it is important to remember that all policy fields have the potential to impact fundamental rights, not just those traditionally associated with such rights.

In addition, mainstreaming fundamental rights contributes to more inclusive policymaking. This is particularly significant for groups whose rights may otherwise receive insufficient attention, including persons with disabilities, migrants, children, and the elderly. Identifying possible impacts at an early stage enables policymakers to incorporate safeguards and mitigating measures from the outset, improving both the quality and the legitimacy of the final policy choice.

Finally, IAs also serve an important democratic function. They enhance transparency by making clear the problem being addressed, the objectives pursued, the rights affected, the evidence relied upon, and the reasoning behind any restrictions. In doing so, they reinforce democratic legitimacy, foster accountability, support informed public debate, and strengthen trust in public institutions.

Fundamental rights considerations should be addressed from the very beginning of the policymaking process, at the planning stage of the initiative, to ensure that the assessment is evidence-based and properly informed. During public consultations and supporting studies, information should be gathered on possible impacts on fundamental rights, including through engagement with affected groups, experts, and civil society organisations. Such engagement helps ensure that the assessment reflects real-world effects that may not be apparent from desk research alone.

The European Commission has issued several policy documents related to conducting IAs.[9] While these documents are primarily aimed at determining procedural steps to propose EU

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[7] European Commission, "Better Regulation Toolbox", https://commission.europa.eu/document/download/9c8d2189-8abd-4f29-84e9-abc843cc68e0_en?filename=BR%20toolbox%20-%20Jul%202023%20-%20FINAL.pdf.
[8] Article 51(1) of the Charter sets forth that its provisions apply to Member States when they implement EU law.
[9] See European Commission, "Better Regulation Toolbox" https://commission.europa.eu/document/download/9c8d2189-8abd-4f29-84e9-abc843cc68e0_en?filename=BR%20toolbox%20-%20Jul%202023%20-%20FINAL.pdf; European Commission,

legislation within EU institutions and enhancing transparency in the EU regulatory process, they are also relevant to national policymaking when implementing EU law, as they can serve as examples of good practice for Member States.

IAs are widely regarded as best regulatory practice, as recommended for instance by the Commission as well as the Organisation for Economic Cooperation and Development (OECD).[10] Commission IA guidance documents have been developed and refined over the years on the basis of decades of learned experience and widespread stakeholder consultation and feedback.[11] In particular, the Commission published in December 2025, the "Revised operational guidance on taking account of fundamental rights in European Commission impact assessments" aimed at providing a step-by-step guidance on how to assess impacts on the Charter in Commission's IAs. This guidance serves as an excellent point of reference for national regulatory officials and will constitute the prime sources underpinning the recommendations contained in this section.

Building on tools developed for the Commission, this manual looks at how fundamental rights considerations are reflected in Commission IAs and formulates relevant insights that could be used for inspiration in the policymaking processes at a national level. Thus, the manual presents a step-by-step framework for assessing impacts on fundamental rights in IAs (Section 2) and illustrates its application through eleven examples drawn from the practice of Commission Directorates-General (Section 3). Additional resources are listed in Section 4.

The framework set out in Section 2 brings together and synthesises guidance from European Commission documents on IAs and adapts it to the national context. This approach is not meant to be prescriptive for national authorities. Assessments of fundamental rights impacts in IAs can be tailored to the needs of the specific national policymaking environment at hand. The examples in Section 3 cover a wide range of rights, stakeholders, and types of impact, including both positive and negative effects.

This manual is designed for national policymakers to ensure compliance with fundamental rights when implementing EU law. It can also serve as a useful reference for Member States more broadly, including in situations where they are not implementing EU law, as a general framework for integrating fundamental rights considerations into policymaking.

"Better Regulation Guidelines" (SWD (2021) 305 final) and Commission, 'Revised operational guidance on taking account of fundamental rights in European Commission impact assessments' (C (2025) 8354 final)

[10] European Commission, "Better Regulation for Growth and Jobs in the European Union" (COM (2005) 97 final) p. 8; OECD, "Recommendation of the Council on Regulatory Policy and Governance" (2012) https://www.oecd.org/content/dam/oecd/en/publications/reports/2012/11/recommendation-of-the-council-on-regulatory-policy-and-governance_g1g3fce5/9789264209022-en.pdf; OECD, "Better Regulation Practices across the European Union" (2019) https://www.oecd.org/content/dam/oecd/en/publications/reports/2019/03/better-regulation-practices-across-the-european-union_g1g9e0e7/9789264311732-en.pdf, p. 74-75.

[11] E.g. European Commission, "Stocktaking of the Commission's 'better regulation' approach" (May 2018) https://ec.europa.eu/info/law/better-regulation/have-your-say/initiatives/1733-Stocktaking-of-the-Commissions-better-regulation-approach_en; European Commission, "Call for Evidence on the Communication on Better Regulation" (13 January 2026) https://transition-pathways.europa.eu/construction/news-publications/call-evidence-communication-better-regulation.

2. Suggested Step-by-step Approach to Assessing Fundamental Rights Considerations in Impact Assessments

This section sets out a step-by-step approach to help national officials conduct impact assessments that take fundamental rights into account when implementing EU law. Drawing together the key observations and practices set out across the relevant Commission documents, it identifies those aspects that are most relevant for national regulatory authorities. It also highlights potential pitfalls and points to examples of good practice throughout.

The proposed framework follows the typical life cycle of a policy assessment: 1) setting the scene and defining the problem; 2) identifying the rights at stake; 3) assessing the impact of each policy option on these rights; and 4) justifying both the selection of the preferred policy option as compared to others as well as any restrictions on fundamental rights.

Step 1: Problem definition and policy options

An impact assessment cannot meaningfully evaluate impacts without a clear understanding of the policy context, the problems the initiative seeks to resolve, and the range of solutions under consideration.[12] Thus, the IA should begin with a concise description of the problem, the proposed action, explaining its objective (including whether it implements EU law), legal basis, scope and the actors involved. Conducting these introductory steps thoroughly anchors the rights analysis early. An unarticulated or vague problem definition has the potential to lead to shallow or circular assessments of fundamental rights impacts later in the process because the impact analysis ends up describing gains and losses in the abstract rather than in relation to a clearly defined problem.

What should be described at the problem definition stage?

In the problem definition stage, the nature and scale of the problem should be described. The objectives of the initiative also need to be defined. When setting objectives, respect for fundamental rights may be included as a general or specific operational objective. Even when fundamental rights are not formulated as explicit objectives, the objectives chosen must still align with broader EU policies and values, including the Charter. In practice, fundamental rights often appear as explicit objectives in areas where rights protection is central. For instance, past IAs have identified objectives such as strengthening the protection of individuals' fundamental rights in cross border road safety enforcement,[13] or empowering users and safeguarding fundamental rights such as the freedom of expression in the Digital Services Act.[14]

Which policy options may be listed?

When developing policy options, only options compatible with the Charter should be considered.

An option should therefore be discarded where it would:

- clearly lead to a violation of a fundamental right; or
- impose an unnecessary or disproportionate limitation on such a right.

A classic illustration appears in the impact assessment on preventing the dissemination of terrorist content online.[15] There, transforming a non-binding Recommendation into binding

[12] European Commission, "Better Regulation Guidelines" (SWD (2021) 305 final) p. 33; "Better Regulation Toolbox" (n **Error! Bookmark not defined.**) p. 49, 57 and 248; Commission, "Revised operational guidance on taking account of fundamental rights in European Commission impact assessments" (C (2025) 8354 final) pp. 19–24.

[13] European Commission, "Impact assessment report accompanying the document Proposal for a Directive of the European Parliament and of the Council amending Directive (EU) 2015/413 facilitating cross-border exchange of information on road-safety-related traffic offences" (SWD (2023) 126 final).

[14] European Commission, "Impact assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on s Single Market for Digital Services" (SWD (2020) 348 final).

[15] European Commission, "Impact assessment accompanying the document Proposal for a Regulation of the European

rules for all illegal content was rejected early because it required general monitoring of all user content, raising serious concerns for the rights contained in Article 11 of the Charter (freedom of expression), Article 8 (data protection) and Article 16 (freedom to conduct a business). Since such a measure was not proportionate, it could not be pursued from the outset.

A well-structured IA should outline a diversity of policy options that vary meaningfully in scope and intrusiveness. Good examples include the IAs for the proposal on combating online child sexual abuse,[16] which explores five increasingly intrusive options from voluntary detection to mandatory scanning for grooming; the proposal for the AI Act,[17] which contrasts non-binding labelling standards, sector specific rules, horizontal mandatory rules for high-risk systems, and universal mandatory rules for all AI systems; and the assessment for the Accessibility Directive,[18] which considers soft law, conditional harmonisation and full harmonisation.

To make this more operational, it is helpful to keep in mind potential **pitfalls** at Step One:

- **Insufficient description of the problem**, which makes it difficult to know whether an intervention improves or worsens rights protection.
- **Providing policy options that are too similar**, which diminishes the scope of the IA and weakens the meaningfulness of the proportionality assessment.
- **Ignoring the rights dimension** of what is framed as a purely technical or economic problem.

Good practices at Step 1 include:

- **Define the problem clearly and identify the affected fundamental rights early on.**
- **Ensure that the objectives of the initiative align with the Charter**, and, where appropriate, frame the promotion of fundamental rights as explicit objectives.
- Develop policy options that **differ in scope and intrusiveness.**
- **Exclude any option incompatible with the Charter** from the outset.

Step 2: Identifying the rights at stake

Once the problem and the policy options have been defined, the next step is to identify which fundamental rights may be affected by the initiative.[19] Fundamental rights questions should be raised early, ideally from the planning stage or, at the latest, when drafting the call for evidence.[20] Early identification matters because the quality of the entire analysis depends on whether the relevant rights have been mapped properly from the outset. If this mapping is incomplete or superficial, the later impact assessment will inevitably suffer. A first indication of which rights may be engaged can be obtained by using the Better Regulation Toolbox Tool #18's identification of impacts,[21] which involves mapping out all potentially relevant impacts according to affected parties and areas of relevance, selecting those impacts which are likely to be significant, and then assessing them.

The screening stage involves identifying:

Parliament and of the Council on preventing the dissemination of terrorist content online" (SWD (2018) 408 final).

[16] European Commission, "Impact assessment report accompanying the document proposal for a Regulation laying down rules to prevent and combat child sexual abuse" (SWD (2022) 209 final)

[17] European Commission, "Impact assessment accompanying the proposal for a Regulation laying down harmonised rules on artificial intelligence" (SWD (2021) 84 final.

[18] European Commission, "Impact assessment accompanying the document proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards accessibility requirements for products and services" (SWD (2015) 264 final).

[19] "Better Regulation Guidelines" (n 12) p. 32, "Better Regulation Toolbox" (n **Error! Bookmark not defined.**) p. 249, "Revised Operational Guidance" (n 12) p. 25,

[20] "Better Regulation Toolbox" (n **Error! Bookmark not defined.**) p. 249

[21] Ibid, pp. 138–144

- **which rights could be engaged by the proposal** (consult the first question of the fundamental rights key questions checklist in the Better Regulation Toolbox);[22]
- whether any of them are **absolute rights** that can **never be limited** (consult the second question of the checklist).[23]

Rights mapping should cover all types of rights that may be affected, including:

- **individual** rights such as privacy, freedom of expression, consumer protection and non-discrimination;
- **collective** or **group-specific** rights such as the rights of children, persons with disabilities, workers or asylum seekers;
- **economic** rights such as the freedom to conduct a business or property rights;
- **procedural** rights including the right to an effective remedy, the presumption of innocence and due process guarantees.

This mapping should also distinguish between rights that are promoted by the measure and rights that are restricted. For example, in the IA for the proposal on combating child sexual abuse,[24] children's rights were held to be strengthened, while users' privacy and service providers' freedom to conduct a business were restricted. Likewise, in the assessment for the Terrorist Content Regulation,[25] the right to life and security was held to be enhanced, but the right to respect of private and family and freedom of expression were restricted by automated removal tools.

Absolute rights cannot be restricted

The authorities should assess whether any of the identified rights are absolute, because these rights can never be restricted under any circumstances.[26] These include: human dignity,[27] the right to life,[28] the prohibition of torture and inhuman or degrading treatment,[29] and the prohibition of slavery and forced labour.[30] If a policy option would interfere with an absolute right, that option should be discarded at this stage. Other derogable rights, such as freedom of expression, may be restricted, but only under the strict conditions laid down in Article 52 of the Charter, which will be examined in the justification stage (Step 4).

Rights should be contextualised

An assessment of impacts on fundamental rights in IAs should also explain the broader societal, technological or institutional context that places pressure on the rights concerned. This contextualisation clarifies why intervention may be needed and which rights are genuinely at risk. Some impact assessments make these links explicit. For example:

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[22] Ibid, p. 152.
[23] Ibid, p. 153.
[24] Commission, "Impact assessment report accompanying the document proposal for a Regulation laying down rules to prevent and combat child sexual abuse" (SWD (2022) 209 final).
[25] Commission, "Impact assessment accompanying the document Proposal for a Regulation on preventing the dissemination of terrorist content online" (SWD(2018) 408 final).
[26] "Better Regulation Toolbox" (n **Error! Bookmark not defined.**) pp. 153 and 248–249; "Revised Operational Guidance" (n 12) pp. 7 and 13.
[27] Case C-578/16 PPU *CK and Others* [2017] EU:C:2017:127 [59].
[28] However, as per Article 2(2) ECHR, "deprivation of life shall not be regarded as inflicted in contravention of this Article when it results from the use of force which is no more than absolutely necessary: (a) in defence of any person from unlawful violence; (b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; (c) in action lawfully taken for the purpose of quelling a riot or insurrection."
[29] Joined Cases C-404/ 15 & C-659/ 15 *Aranyosi and Căldăraru* EU:C:2016:198 [85].
[30] On this, see Article 15(2) ECHR.

- For the Accessibility Directive,[31] the Commission made a clear link between structural barriers in goods and services and their impact on people's autonomy and dignity.
- In the proposal of the Reception Conditions Directive,[32] it pointed out that poor detention conditions and limited material support can undermine individuals' dignity and liberty.

Which practical steps help identify the rights at stake?

The Commission's 2025 revised operational guidance on assessing impacts on fundamental rights mentions several **practical steps** to identify the rights at stake.[33] The guidance is addressed to the Commission staff, however, if relevant in the national context, these steps can also be followed by national authorities:

- **Collect rights-relevant data** during consultations;
- **Involve key internal services early** such as legal services or ministries to whom the policy may be relevant;
- If the IA is carried out by external experts, ensure the **terms of reference require** explicit attention to **fundamental rights**;
- **Engage relevant stakeholders**, including civil society organisations, social partners, and associations of legal professionals;
- Make use of **expertise** from EU bodies such as the European Data Protection Supervisor, Eurostat, the Fundamental Rights Agency, and the European Institute for Gender Equality, as well as national equivalents.

Potential pitfalls in Step 2:

- Doing an **incomplete or generic rights mapping**;
- **Missing intersectional or group-specific impacts**;
- **Not identifying absolute rights** early on, if there are any;
- **Providing little or no contextualisation**, meaning the IA names rights but does not explain the structural, social or technological pressures that put those rights at risk;
- **Running consultations without collecting rights-relevant data**, which leaves the assessment without the evidence it needs to be credible and comprehensive.

Good practices at Step 2:

- **Map all relevant rights carefully**, and make a clear distinction between rights that are promoted and rights that are restricted;
- **Identify any relevant absolute rights from the outset**, and immediately exclude any policy option that would interfere with them;
- **Explain the** broader societal, technological or institutional **context** that gives rise to risks related to the **right**;
- **Use authoritative interpretative sources**, such as the Charter Explanations,[34] case law of the Court of Justice of the European Union (CJEU) and European Court of Human Rights (ECtHR) and relevant international human rights instruments.

[31] European Commission, "Impact assessment accompanying the document proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards accessibility requirements for products and services" (SWD (2015) 264 final).
[32] European Commission, "Proposal for a Directive laying down minimum standards for the reception of asylum seekers: Impact Assessment" (SEC (2008) 2944).
[33] "Revised Operational Guidance" (n 12).
[34] "Explanations relating to the Charter of Fundamental Rights" [2007] OJ C303/17.

- **Involve relevant experts and gather solid evidence** by engaging internal services, consulting stakeholders and ensuring that studies and consultations collect the data needed to assess rights impacts properly.

Step 3. Assessing the Impact

At this step, once there is a clear picture of which fundamental rights are at stake and a realistic range of policy options, the authorities should explain how the various options would affect those rights and how these impacts are reflected in the impact assessment across all options.[35] It should be noted that because fundamental rights are diverse and cut across multiple policy fields, their impact on fundamental rights should be assessed and integrated throughout every section of the IA.

The impacts of the various policy options on the identified fundamental rights can be positive or negative, in the sense that they either promote or limit the right (respectively). For every policy option retained under Step 1, the assessment should examine how that option affects each right identified in Step 2. Where several measures make up a policy option, the fundamental rights impact of each measure should be assessed individually.[36]

The analysis should be comparative and evidence-based and should not be an abstract comparison between rights. A high-quality analysis shows the magnitude of the impact, the nature of the impact, the distribution of the impact across rights holders, and the temporal dimension of the impact. Sometimes a single option improves one right but harms another (for example, a measure might protect intellectual property but restrict freedom of expression). In such cases, the IA needs to acknowledge and explain that there are both benefits and risks for different rights.

The analysis should also examine whether each policy option has different effects on, for example, women and men, minority ethnic communities, LGBTQI+ persons, religious groups, children or older persons, or persons with disabilities.[37] The assessment should also ask whether any of the options genuinely help reduce discrimination by promoting equal treatment and leading to fairer outcomes across sex, ethnic origin, religion or belief, disability, age, or sexual orientation.

If a measure has no negative impact on fundamental rights and only positive effects, the analysis usually does not need to go much further. By contrast, whenever a negative impact is identified, it is necessary to consider whether the interference complies with the requirements of Article 52(1) of the Charter, which sets out the conditions for the lawfulness of a restriction of a fundamental right. These criteria include that the interference has a legal basis, pursues a legitimate objective, is proportionate, and respects the essence of the right (see Step 4). Moreover, in case a negative impact is acknowledged, the analysis should identify what safeguards are required to ensure that these impacts do not amount to violations. Any safeguard should be described in sufficient detail.

For example, in the IA related to the proposal for a Regulation facilitating interoperability between EU information systems,[38] the analysis recognised both positive effects (such as more accurate identification and protection of life) and negative effects (linked to dignity due to biometric data collection). It then explained how specific design choices, such as a two-step access procedure for law enforcement authorities, could mitigate risks and reduce the impact on rights such as the presumption of innocence.

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[35] "Better Regulation Guidelines" (n 12) p. 33–34, 'Better Regulation Toolbox' (n **Error! Bookmark not defined.**) pp. 249–250, "Revised Operational Guidance" (n 12) pp. 24–27.
[36] "Revised Operational Guidance" (n 12) p. 23.
[37] In line with the equality checklist in the Toolbox: "Better Regulation Toolbox" (n **Error! Bookmark not defined.**) p. 250.
[38] European Commission, "Impact assessment accompanying the document Proposal for a Regulation of the European Parliament and the Council on establishing a framework for interoperability between EU information systems (borders and visa)" (SWD (2017) 0474 final).

How to quantify or qualify the impacts?

In most cases, impacts on fundamental rights require qualitative assessment.[39] Sometimes quantification is possible, for example by estimating income loss to illustrate interference with property rights or showing a reduction in the gender pay gap as progress for equality between women and men. However, many rights cannot meaningfully be expressed in numerical terms. Where policy options contain both quantifiable and non-quantifiable impacts, they should be compared using structured qualitative reasoning.[40] A well-grounded assessment of fundamental rights in an IA draws on empirical data and statistics, scientific or technical evaluations, stakeholder and public consultations, comparative studies, relevant jurisprudence and opinions from bodies such as Fundamental Rights Agency, the European Data Protection Supervisor, the EU Agency for Cybersecurity, or equality bodies.

Comparing the options and selecting a preferred option

When comparing policy options, the analysis should consider the specific nature of their impacts on fundamental rights and should not aggregate different types of impacts into a single overall score.[41] Aggregating unrelated impacts can lead to misleading results. For example, if one option would violate children's rights under Article 24 of the Charter, that violation cannot be offset by positive effects on a different right or by economic or social benefits. A violation cannot be "traded off", because fundamental rights must be upheld as a matter of law.

In selecting a preferred option, that with the least negative impact on fundamental rights should be considered.[42] This does not mean that the option with no negative impacts must always be chosen, since legitimate objectives of general interest can justify certain limitations. However, if two options are equally effective in achieving the policy objective but one entails a more intrusive restriction of rights, the less intrusive option should be given serious consideration. The same reasoning applies when comparing options designed to promote a fundamental right. If two options perform similarly overall, the option that delivers the greater positive effect on fundamental rights should be examined carefully as a potentially preferred choice.

The IA should present this choice transparently by explaining which option was selected, how it compares to the alternatives, how it best meets the policy objectives, and how it maximises rights benefits while minimising harms.

Potential pitfalls in Step 3

- **Assessing only the preferred option**, instead of comparing *all* options against *all* rights;
- Basing the analysis on **abstract discussions of rights**;
- Trying to **offset a rights violation with unrelated benefits** (such as economic gains);
- **Failing to integrate quantitative and qualitative impacts** coherently;
- Selecting an option **without transparent explanation.**

Good practices at Step 3:

- Carry out a **comparative, evidence-based analysis**, looking at how each option affects each right in practice rather than speaking in general terms;
- Acknowledge both **the positives and the negatives**;
- Use **data and expert knowledge** wherever possible;

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[39] "Revised Operational Guidance" (n 12) p. 25.
[40] in line with "Better Regulation Toolbox" (n **Error! Bookmark not defined.**) p. 144.
[41] "Revised Operational Guidance" (n 12) p. 28.
[42] Ibid, p. 29.

- **Assess equality impacts systematically**, checking how different groups are affected and whether an option narrows or deepens existing inequalities;
- **Present the preferred option transparently**, showing why it best meets the policy objectives while maximising rights protection and minimising harm.

Step 4: Justification

Where an initiative *only* enhances rights with no identifiable restriction, no justification of a fundamental rights restriction in the sense of Article 52 of the Charter is required once a preferred policy option has been selected. However, even in such cases, the IA should still explain why the preferred option was chosen, especially when it does not offer the highest possible level of fundamental rights protection.

If the preferred option includes any negative effects on fundamental rights, the limitation[43] must be justified in accordance with Article 52(1) of the Charter. This requires a structured assessment of whether the interference is (i) lawful, (ii) pursues a legitimate aim, (iii) is proportionate (i.e. is suitable, necessary, and proportionate in the strict sense), and (iv) preserves the essence of the right.[44] If these conditions justifying the limitation are not met, the interference with such a right will amount to a violation.

Thus, where a fundamental rights restriction is identified, the justification stage should explain both (i) the general reasoning justifying the adoption of the preferred policy option over others under consideration and (ii) how the fundamental rights restriction in particular is justified in the sense of Article 52(1) of the Charter. Where no fundamental rights restriction is identified, it follows that only the first of these steps should be included. The following subsections will elaborate on the Charter's Article 52(1) criteria connected to assessing fundamental rights restrictions.

i. Is the limitation "provided for by law"?

A limitation must have a clear legal basis. Individuals must be able to understand from the measure what is permitted, what is prohibited and what the consequences are. The rules must be accessible, foreseeable and predictable, not vague or unclear.

ii. Does the measure pursue a legitimate aim?

The limitation must genuinely pursue an objective of general interest recognised by the Union or protect the rights and freedoms of others. Legitimate aims include, for example, protection of minors, prevention of crime or terrorism, safeguarding public health, consumer protection, economic fairness, equality, and non-discrimination.

iii. Is the measure proportionate?

Measures that disproportionately restrict fundamental rights can be deemed invalid. When a case concerns an interference with fundamental rights, in contemporary cases the Court of Justice generally takes a three-step analytical approach to proportionality, assessing suitability, necessity, and proportionality in the strict sense ("stricto sensu").

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[43] I.e. any measure or conduct by public authorities (e.g., legislative acts, administrative decisions or government practice) that directly or indirectly undermines the exercise or enjoyment of the rights and freedoms guaranteed by the Charter (see "Revised Operational Guidance", pp.14–15).

[44] The Fundamental Rights Checklist ("Better Regulation Toolbox" (n **Error! Bookmark not defined.**) p. 249) can assist authorities in carrying out this analysis. See also Article 52(1) of the Charter and "Revised Operational Guidance" (n 12) pp. 14–16 and 26–27.

Suitability

Assessing whether a policy option is suitable involves asking whether the proposed measure can indeed contribute to achieving the legitimate objective pursued (identified in proportionality step (ii)).[45] If there is no rational connection in that respect, the measure is not appropriate and is therefore disproportionate. A restriction is only suitable if it genuinely reflects a concern to attain the objective in question in a consistent and systematic manner.[46]

Necessity

Necessity is about showing that the chosen policy option does not go further than what is required to address it[47] (with the Court using language of no less "onerous"[48] or "restrictive"[49] means being available). In practice, this means demonstrating that there is no other measure that would be just as effective but less restrictive of fundamental rights. A useful illustration comes from the impact assessment for the terrorist content proposal,[50] where keeping removed content for a limited time was found necessary because, without it, redress mechanisms could not function properly for either users or service providers.

Proportionality in the strict sense

This third step asks whether the measure strikes a fair balance between the competing rights and interests at stake, looking at whether certain parties are impacted in a particularly disproportionate way. It involves balancing the protection of fundamental rights of one group or another legitimate objective against interference with the rights of another group,[51] determining whether one "outweighs"[52] the other.

iv. Does the measure preserve the essence of the right?

It is prohibited for a restriction to undermine the core meaning of a fundamental right. If the essence is compromised, the measure is automatically unlawful. The "essence" (otherwise referred to as the "very substance"[53] or "essential content"[54]) of the right refers to the "absolute and inalienable core" of the right.[55]

Potential pitfalls in Step 4:

- Using **vague legal bases**, so individuals cannot foresee how the limitation will apply in practice;
- Stating a **legitimate aim without demonstrating it**, or relying on aims not recognised under EU law;

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[45] Using language of "appropriateness", see e.g. Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland* EU:C:2014:238, paras 46 and 49.
[46] Case C-390/12 *Pfleger* EU:C:2014:281, para 43.
[47] Joined Cases C-92/09 and C-93/09 *Volker and Schecke* EU:C:2010:662, para 74.
[48] Case C-73/16 *Puškár* EU:C:2017:725, para 68.
[49] Case C-439/19 *B v Latvijas Republikas Saeima* EU:C:2021:504, paras 110 and 113.
[50] European Commission, "Impact assessment accompanying the document Proposal for a Regulation on preventing the dissemination of terrorist content online" (SWD(2018) 408 final).
[51] See e.g. the explanation by Advocate General Saugmandsgaard Øe in Joined Cases C-203/15 and C-698/15 *Tele2 Sverige* EU:C:2016:572, paras 248–250.
[52] Case C-547/14 *Philip Morris* EU:C:2016:325, para 156.
[53] Case C-44/79 *Hauer* EU:C:1979:290, para 23.
[54] Case C-192/22 *FI v Bayerische Motoren Werke* EU:C:2023:347, para 22; Case T-470/20 *DD v European Union Agency for Fundamental Rights*, EU:T:2022:511 paras 87–88 and 97.
[55] Tobias Lock "Article 52 CFR" in Manuel Kellerbauer, Marcus Klamert, and Jonathan Tomkin (eds), *The EU Treaties and the Charter of Fundamental Rights: A Commentary*' (OUP 2024) 607, 610.

- Failing to assess **less intrusive alternatives**;
- **Assuming necessity** instead of proving it;
- **Conducting proportionality briefly;**
- Failing to check **whether the essence of the right is preserved**;
- **Not explaining why the preferred option was chosen**, especially when a less intrusive option was available.

Good practices in Step 4:

- **State the legal basis precisely**, so that people can genuinely understand what the limitation means for them and why it is predictable and properly framed in law;
- Explicitly show the **link to a legitimate aim**;
- **Explain necessity in concrete terms** by comparing the option to realistic alternatives and showing why less intrusive solutions would not achieve the same result;
- **Take proportionality seriously**;
- **Check that the essence of the right is safeguarded;**
- **Present the justification clearly** in the executive summary.

Conclusion

To conclude, when all these steps are carefully carried out, the assessment of fundamental rights impacts in IAs provides a proposal with durability and legitimacy. It helps policymakers design measures that achieve their goals without losing sight of fundamental rights along the way. More broadly, going through this exercise encourages policymakers to build a strong and lasting culture of respect for fundamental rights in their everyday work. To further demonstrate best practices in this regard, Section 3 highlights 12 real IAs performed by the Commission, structured in accordance with the step-by-step approach proposed in this section. In some instances, the Commission's assessment is elaborated upon by supplementing it with further analysis.

At this stage it is important that the impact on fundamental rights be considered not only when creating EU legal instruments or policies but also during **their monitoring and evaluation**, especially where significant effects are likely. From the impact assessment stage, arrangements should be planned to monitor compliance, including data collection, indicators, and establishing a baseline to measure change. Indicators may include the number and outcomes of complaints about alleged violations, or progress in promoting rights, such as reduced gender inequalities or discrimination.

3. Examples

To demonstrate how fundamental rights are mainstreamed in EU policymaking, this section provides a sample of 11 recent EU-level IAs that have considered the potential fundamental rights impacts of policy options under consideration. These examples are separated into those in which a fundamental rights restriction was identified, thus requiring an analysis of their justifiability in the sense of Article 52(1) of the Charter, and those in which such a restriction did not exist. The selection of examples covers a range of fundamental rights, from privacy to the rights of the child or freedom to conduct a business. To highlight best practices, it selected the Commission IAs that were the most thorough in weighing and balancing various fundamental rights. Each example is structured according to the key steps of an IA as presented in Section 2. This common analytical framework allows for systematic comparison and helps distil lessons for policymakers.

As will be seen, these examples cut across a range of competence areas, from social policy to consumer protection and the internal market. They also involve assessing the impact of policy measures on various stakeholders, including individuals (e.g. women, children, consumers) and economic operators. The rights at stake are also diverse in nature, covering impacts on rights from numerous chapters of the Charter, including dignity, freedoms, equality, solidarity, and justice.

To make these examples as helpful as possible, we supplement them with further analysis in instances where the actual IA did not touch on all steps of a justification analysis. Where this is done, we will make it explicit.

Examples with fundamental rights restrictions

Example 1: Proposal for a Regulation laying down rules to prevent and combat child sexual abuse[56]

i. Introduction

This proposal sought to lay down common rules aimed at preventing and combating child sexual abuse. The core of the content proposed was to establish responsibilities of online service providers - such as social media platforms, gaming services, and other hosting and online communication services - in relation to protecting children against sexual abuse. The proposal's IA considered five policy options (A to E), all of which would impact fundamental rights to varying degrees.

- Option A: would establish measures to enhance the prevention, detection, reporting and removal of child sexual abuse content as well as to assist child victims. An EU Centre to prevent and counter child sexual abuse would also be established, which would support implementation of the proposed Regulation by the service providers and Member States;
- Option B: would consist of option A's measures, plus legislation specifying the conditions for voluntary detection, mandatory reporting and removal of online child sexual abuse, and expanding the EU centre to also support detection, reporting, and removal;
- Option C: would add the mandatory detection of known child sexual abuse material to this list of measures;
- Option D: added the mandatory detection of new child sexual abuse material;
- Option E (preferred option): involved the most far-reaching measures, including the mandatory detection of "grooming", that is the perpetrator's solicitation methods. Given that this was the preferred option, we explore the justification of its fundamental rights impact in this example.

ii. Rights at stake

Every proposed measure to combat child sexual abuse potentially affects the fundamental rights of several categories of stakeholder:

- Children: Article 1 (human dignity), Article 3 (integrity of the person), Article 4 (prohibition of torture and inhuman or degrading treatment or punishment), Article 24 (rights of the child), Article 7 (privacy), Article 8 (personal data protection);
- Users of online platforms: rights to privacy (Article 7), personal data protection (Article 8), and freedom of expression and information (Article 11); and
- Economic operators, such as online service providers: Article 16 (freedom to conduct a business).

In terms of children, the ease with which online platform users can disseminate content online (such as content depicting child sexual abuse) and communicate with children (to engage in grooming) is what gives rise to serious risks in terms of these children's rights. For the users of online platforms, the impact assessment noted that their rights to privacy, personal data protection, and freedom of expression and information are also necessarily limited when measures are created to monitor online activities aimed at detecting child sexual abuse. For

[56] European Commission, "Proposal for a Regulation laying down rules to prevent and combat child sexual abuse" COM (2022) 209 final; European Commission, "Impact assessment report accompanying the document proposal for a Regulation laying down rules to prevent and combat child sexual abuse" (SWD (2022) 209 final).

economic operators, their freedom to conduct a business would be restricted, because detection obligations entail increased costs for businesses.

iii. Assess the impact

It was found that, compared to the baseline scenario, Option A had a "limited positive impact on fundamental rights" in that it would assist victims of child sexual abuse. The rights of content and service providers would not be substantially affected compared to the baseline scenario.

Option B, while it would further protect the fundamental rights of children, would also affect online users' rights mentioned in section (ii), since it involved data processing for the purposes of detection. This is because online materials and exchanges would have to be checked for the presence of child sexual abuse material. This option would not have an impact on the rights of service providers who choose to take no action to proactively detect child sexual abuse. But those who choose to do so would be subject to new requirements (e.g. reliability and accuracy of technologies and reporting and removal), limiting their freedom to conduct a business.

By introducing the mandatory detection of known child sexual abuse material, Option C was deemed to have a "significantly positive impact on fundamental rights of victims", in particular because up to 80% of investigations in some Member States are possible only because of reports from providers. At the same time, this option would have a notable impact on freedom to conduct a business by making the detection obligation mandatory instead of voluntary. Service users' rights are also limited to a greater extent under this option since more detection measures would be in place.

Option D would extend the positive and negative impacts in the same way, given that it would add obligations to detect *new* child sexual abuse material.

The preferred option E was found to have significant positive effect in terms of promoting children's rights by contributing to the prevention of abuse through the mandatory detection of grooming. Yet this option would also be the most intrusive one for users since it would involve searching text for grooming, such as interpersonal communications. It would also place the greatest demands on economic operators, further limiting their freedom to conduct a business.

iv. Justification

<u>Justifying the choice of policy option</u>

The choice of the most far-reaching option—option E—was deemed justified based on the fact that it most effectively addresses the problems identified. In particular, Option E would (i) best improve identification, protection, and support of victims, (ii) ensure effective prevention, and (iii) facilitate investigations. The IA noted that, while other options were more economically advantageous, "the degree to which they would be less effective outweighs financial savings." In terms of its compliance with the general principle of proportionality, in addition to being suitable to address the problem for the aforementioned reasons, it was also considered to not go beyond what was necessary. This was especially the case because the proposed option did not include general monitoring or active fact-finding obligations and would include safeguards, such as the use of state-of-the-art technologies and procedures that ensure accuracy, transparency, and accountability.

<u>Justifying the fundamental rights restriction</u>

In demonstrating the justifiability of the restriction, the Commission focused on the legitimate aim pursued by the restriction and the "necessity" limb of the proportionality analysis. Here, we supplement that analysis by also showing why the restriction (i) was lawful, (ii) pursues a legitimate aim, (iii) complied with the other proportionality requirements (suitability and proportionality stricto sensu), and (iv) respected the essence of the restricted rights.

First, we can observe that this proposal complies with the first requirement of Article 52(1) of the Charter, which is that the restriction is lawful. Article 114 TFEU serves as the legal basis for the proposed measure, as it seeks to harmonise requirements for online service provides in the digital Single Market. The proposed measure then contains provisions providing a basis for service providers for processing the personal data that is necessary for them to address CSA.

The proposed Regulation also pursues a legitimate aim: preventing and combating CSA. In support of the claim that this is a legitimate aim, the IA points to the fact that CSAM is "the only type of illegal content whose mere possession is illegal".

In terms of the proportionality of the restriction of the rights of users of online services and economic operators, the measure can be considered suitable to achieve the objective, as all of the measures designed to prevent, detect, report and remove of CSAM would contribute to preventing and combating CSA. The Commission also highlighted the necessity of such far-reaching measures on the fact that victims themselves are frequently unable to seek help due to their vulnerability and due to the efforts by offenders to avoid disclosure of their offences. Policy option E was not found to go beyond what was necessary, as certain limitations and safeguards were put in place. For instance, for grooming detection only certain specific service providers considered high risk of being misused for grooming would have the detection obligation imposed on them. Conversely, other options, such as voluntary action by online service providers to detect online child sexual abuse, proved insufficient to achieve the objectives. Finally, in regards to proportionality *stricto sensu*, the benefits brought by the measure to children in terms of protecting them as victims of CSAM can be seen as outweighing the disadvantages brought by the restriction.

It can also be considered that the essence of the rights interfered with was maintained. For instance, when it comes to the rights to privacy, the CJEU has only found that measures giving public authorities generalised access to electronic communications would infringe the essence of this right.[57] Such general access is not provided for by the proposed Regulation. Rather, reports by online service providers are limited to reporting the specific instances of CSAM concerned. When it comes to users' rights of freedom of expression and information, since users are only being restricted from communicating and receiving specific types content that is illegal, but are able to communicate and receive content more generally, the essence of Article 11 of the Charter cannot be considered infringed. As for the essence of the freedom to conduct a business, this right of service providers remains generally intact: they are able to continue providing their service subject to certain obligations.

For these reasons, the restrictions of the relevant fundamental rights of users and service providers contained in the proposed measure can be considered justified.

Example 2: Proposal for a Directive on combating violence against women and domestic violence[58]

i. Introduction

The impact assessment notes that violence against women (VaW) and domestic violence (DV) are "widespread across the EU" and highlighted a gap in the existing legal framework. At the time, there was no dedicated EU legislation addressing these problems and insufficient or non-uniform criminalisation across the Member States.

Two policy options were considered:

- Option 1 (moderate): Targeted measures to fill gaps in the prevention and combating of VaW/DV based on the level of protection required by the Istanbul Convention, where these issues fell within the scope of EU competence;

[57] Case C-362/14 *Schrems I* EU:C:2015:650 [94].

[58] European Commission, "Proposal for a Directive on combating violence against women and domestic violence" (COM(2022) 105 final); European Commission, "Impact assessment report accompanying the document proposal for a Directive on combating violence against women and domestic violence" (SWD (2022) 62 final).

- Option 2 (comprehensive): This option builds on Option 1 by introducing stronger measures ensuring higher minimum standards and facilitating their enforceability as well as addressing additional gaps. It contains two sub-options:
    - Option 2A (preferred option): introduces obligations in the areas of cyber violence. It also adds rules on sexual harassment, aligning with the standards set by the ILO Violence and Harassment Convention;
    - Option 2B: goes further, including these measures but also adding minimum rules designed to facilitate access to justice, e.g. when it comes to defining offences and sanctions by proposing to add gender-based violence to the list of Article 83(1) TFEU "EU crimes". Obligations related to state compensation for victims would also be strengthened.

ii. Rights at stake

The rights under pressure from the threat of VaW/DV, and the stakeholders to be affected by the proposed measure, include:

- Victims: Article 2 (right to life); Article 3 (integrity); Article 4 (prohibition of degrading treatment); Article 7 (private and family life); Article 21 (non-discrimination); Article 47 (effective remedy and fair trial); Article 34 (social assistance); Article 45 (health care); Article 31 (fair and just working conditions);
- Children: Article 24 (rights of the child).

For instance, physical VaW/DV can lead to the death of the victim, infringing their rights to life, integrity, and freedom from degrading treatment. VaW/DV also impedes a child's right to such protection and care is necessary for their well-being since witnessing or being subject to such violence is evidently extremely harmful for their well-being. Since violence against women and domestic violence also entails discrimination between women and men, the baseline situation of taking no EU-level action perpetuated this discrimination.

iii. Assess the impact

All of the proposed policy options were expected to strengthen fundamental rights protection to different degrees.

Option 1 would build on crime victims' EU legal rights. Option 2 would provide more extensive protection by including specific measures against cyber-violence and sexual harassment, especially at work. As sub-option 2B involved greater obligations for victim compensation and support, it was foreseen as providing the greatest fundamental rights protection.

The right to life, integrity, and prohibition of inhuman or degrading treatment would be positively impacted by all policy options by virtue of the fact that they foresaw measures to strengthen the protection of persons at risk of such violence, e.g. requiring Member States to conduct risk assessments of the seriousness of the threat posed by a prospective perpetrator to the potential victim.

The policy options under consideration were also expected to positively impact the rights of the child by imposing specific measures to protect and support child victims and witnesses of violence against women and domestic violence. For example, the options would all require Member States to handle cases of such violence in a manner that ensures the best interest of the child, e.g. by providing age-appropriate psychosocial counselling and ensuring visits of children take place in surveyed safe spaces outside the home of an alleged perpetrator.

By recognising violence against women and domestic violence as prohibited forms of discrimination between men and women and also expanding victims' access to anti-discrimination law remedies, the proposed options would also promote the right to non-discrimination.

The right to an effective remedy and fair trial would be better strengthened for victims under options 2A and 2B compared to option 1. This would be done by introducing EU-level criminalisation under both options 2A and 2B. Because 2B also would have introduced VaW/DV as an EU crime in the sense of Article 83 TFEU, and would also provide certainty in terms of access to compensation, it would have provided even greater protection.

The rights to social assistance and health care would also be enhanced by providing specialist services to women victims such as immediate medical support, the collection of forensic evidence in cases of rape and sexual assault, psychosocial counselling and trauma care. Option 2B would have a higher impact by granting special compensated work leave for victims.

Finally, the right to fair and just working conditions would be improved because the proposed measures would introduce specific provisions on sexual harassment at work.

iv. Justification

Justifying the choice of policy option

The preferred policy option was 2A, due to its: (a) better protection of fundamental rights and better social impact compared to option 1; (b) higher net benefit in the long term compared to options 1 and 2B; and (c) lower costs. Option 2B, while being the most far-reaching, was deemed incompatible with the general principle of proportionality especially owing to the fact that it would largely overlap with national criminalisations of domestic violence, therefore not adding much in terms of increased protection. This option 2B was also costly and operationally complex, putting an unjustifiable burden on public authorities.

Justifying the fundamental rights restriction

The section of the IA assessing fundamental rights impacts only noted potential improvements in fundamental rights protection. However, one of the annexes that assessed the potential impacts of possible measures to be adopted under the preferred option did foresee one conceivable negative impact on the fundamental rights of perpetrators of violence. Since these measures—involving orders for intermediary service provides to remove certain online material—were in fact included in the actual Directive adopted in 2024, it is worth exploring how they may have been balanced against other fundamental rights in the IA. We therefore supplement the Commission's analysis in this subsection.

The annex observed that measures such as those could restrict the rights contained in Article 11 of the Charter (freedom of expression and information) and Article 8 (personal data protection). This was particularly the case if the individual was unjustly identified and investigated.

Assessing this fundamental rights restriction, it can first be noted that these restrictions would have a legal basis. Personal data processing in this situation would be lawful on the basis of Article 6(c) GDPR (compliance with a legal obligation) or Article 6(d) GDPR (to protect the vital interests of another natural person). Similarly, Article 8(1) of Directive 2016/680 allows public authorities to process data necessary for the performance of a task necessary for the purposes of prevention, investigation, detection, or prosecution of criminal offences. These serve as legal bases for the restrictions of Article 8 of the Charter. Moreover, the Digital Services Act provides a legal basis for removing illegal content, providing a ground for the restriction of Article 11 of the Charter.

The restriction of these rights can also be considered to pursue a legitimate aim—namely preventing and combating violence against women and domestic violence.

In terms of proportionality, firstly, it can be noted that the restrictions of these rights would indeed contribute to attaining the objective, in that they would address certain manifestations of violence against women and domestic violence (such as sharing private and intimate images online). These restrictions can also be considered necessary. No less restrictive means, e.g. other than removing content related to cyber violence, would be able to achieve the objective.

Balancing these restrictions of the fundamental rights of perpetrators versus protecting the fundamental rights of victims, it can also be observed that the requirement of proportionality in the strict sense would be fulfilled. The restrictions of the Article 8 and 11 Charter rights cannot be considered so severe that they would not be outweighed by the benefits of preventing and combating violence against women and domestic violence.

Finally, the essence of these rights appears to be maintained with such restrictions. As perpetrators would not be restricted from communicating non-illegal content, the minimum substance of these rights remain intact, such that the rights continue to meaningfully exist.

Example 3: Proposal for a Regulation laying down harmonised rules on artificial intelligence[59]

i. Introduction

The AI Act proposal was part of a broader push by the Commission to enhance the confidence of citizens when it comes to embracing AI-based solutions while encouraging businesses to develop them. To this end, the Commission wished to support the development of ethical and trustworthy AI through the proposed measures.

The four policy options under consideration included:

- Option 1: An EU legislative instrument setting up a voluntary labelling scheme;
- Option 2: A sectoral ad-hoc approach;
- Option 3: Horizontal EU legislative instrument establishing mandatory requirements for high-risk AI applications;
- Option 3+ (preferred option): Option 3, in addition to co-regulation through codes of conduct for non-high risk applications;
- Option 4: Horizontal EU legislative instrument establishing mandatory requirements for all AI applications, irrespective of the risk they pose.

ii. Rights at stake

The "impacts on fundamental rights" section identified the rights of the following stakeholders to be relevant:

- Marginalised groups: Article 21 (non-discrimination);
- Citizens generally: Article 8 (data protection);
- Consumers: Article 38 (consumer protection);
- Economic operators: Article 16 (freedom to conduct a business); and Article 17(2) (right to (intellectual) property).

Problems existed in relation to AI when it came to the possibility for AI to discriminate based on race, sex, disability, etc. For instance, AI might indirectly discriminate by using proxies such as postal codes to account for ethnicity and race. Accuracy-related issues may also discriminate by disproportionately affecting certain groups, e.g. where facial recognition systems detect white men well but not black women. When it comes to data protection, one particular problem highlighted by the impact assessment report was the use of remote biometric identification systems in publicly accessible spaces. As for consumers, a lack of regulation when it came to high-risk AI systems meant that consumers would have less guarantees and protection in this

[59] European Commission, "Proposal for a Regulation laying down harmonised rules on artificial intelligence" (COM (2021) 206 final); European Commission, "Impact assessment accompanying the proposal for a Regulation laying down harmonised rules on artificial intelligence" (SWD (2021) 84 final).

regard. Lastly, the rights of economic operators were also at stake since the options under consideration would all impose certain requirements to ensure responsible innovation and use of AI.

iii. Assess the impact

All policy options considered were found to have some positive effects on fundamental rights protection.

- Option 1 voluntary labelling would "marginally facilitate compliance with fundamental rights", but this would only be for AI systems providers who voluntarily decide to sign up to the scheme.
- Option 2's ad-hoc approach would be a first step to fill gaps or complement the relevant fundamental rights legal frameworks, but would possibly lead to delays, inconsistencies, and be limited to the scope of application of each sectoral legislation.
- Options 3, 3+, and 4 would ensure greater consistency and address cross-cutting issues relevant to fundamental rights protection, e.g. by establishing common requirements for trustworthy AI that apply across all sectors. But the positive effect on fundamental rights would differ depending on which of these three options is chosen. This is especially because option 4 envisaged intervention for *all* AI systems, not just those that are high risk, like option 3, meaning it could result in higher protection.

All policy options were also predicted to restrict the rights of economic operators. Restriction would have been minimal under policy option 1 since the measures would have been voluntary, whereas the restrictions provided for under options 2–4 were progressively more pronounced.

iv. Justification

<u>Justifying the choice of policy option</u>

The Commission justified their choice of option 3+ over option 4, despite the latter's higher rights protection. In particular, the regulatory burden that would be placed on such a large number of economic operators and users would especially impact the freedom to conduct a business and would risk preventing the development of low-risk AI systems that could in fact benefit fundamental rights. These consequences were deemed disproportionate to the benefit achieved in that they would go beyond what was necessary to secure a sufficient and high level of fundamental rights protection.

<u>Justifying the fundamental rights restriction</u>

An annex to the IA analysed the potential for the assessed policy options to negatively impact fundamental rights. Amongst other policy options, it noted that the preferred option 3+ would impose justifiable restrictions on economic operators' rights contained in Articles 16 and 17 of the Charter. Whereas the Commission focused on the necessity of the restriction in their analysis, we supplement this here by elaborating on the lawfulness of the restriction, its pursuit of a legitimate aim, the other aspects of proportionality (suitability and proportionality stricto sensu), and respect for the essence of the rights.

In terms of the lawfulness of the restrictions, the legal basis for the AI Act is Articles 16 and 114 TFEU. The former provides a legal basis for the adoption of rules related to data protection, whereas the latter is the internal market harmonising provision. The AI Act contains various provisions imposing obligations on economic operators, e.g. prohibiting them from placing certain AI systems on the market, and putting AI systems deemed "high-risk" under specific compliance requirements including registration in an EU database. This renders the Charter Article 16 and 17 restrictions provided for by law, thus meeting the first requirement for a restriction to be justified.

The restrictions can also be considered to pursue a legitimate objective, in particular ensuring that AI systems that are placed on the market and used are safe and respectful of fundamental rights. As Article 52(1) of the Charter specifically highlights "the need to protect the rights and freedoms of others" as a legitimate aim, this criterion can be considered fulfilled.

On proportionality, first, policy option 3+ does appear to be suitable to attain that objective, as imposing mandatory legal requirements for high-risk AI systems and codes of conduct for non-high risk applications can contribute to protecting users' rights to non-discrimination, data protection, and consumer protection. On necessity, the IA highlighted that the restrictions were "limited to the minimum necessary to prevent and mitigate serious safety risks and likely infringements of fundamental rights." Compliance with the necessity criterion is demonstrated by the fact that the preferred policy option would impose differentiated obligations dependent on risk level: where the AI system is lower risk, less onerous obligations were imposed. As for proportionality stricto sensu, the restrictions imposed appear to strike a fair balance. In terms of the freedom to conduct a business, the significant risks of harm that could be brought by the marketing and use of high-risk AI systems compared to the limited restrictions placed on economic operators appear to justify those restrictions. In regard to the right to intellectual property, since the information to be contained in the EU database was limited to what was necessary and since public authorities and notified bodies in receipt of confidential information were placed under strict and binding obligations of confidentiality, it appears that here too a fair balance was struck.

As for the essence of the right, since economic operators placing AI systems on the market are still able to conduct business subject only to certain limitations, the essence of the freedom to conduct a business appears to be maintained. The essence of the right to intellectual property also seems to be respected, since it "does not lead to a deprivation of property" — which the Court of Justice has found to undermine the essence of the right.[60]

Example 4: Proposal for a Regulation on preventing the dissemination of terrorist content online[61]

i. Introduction

This impact assessment concerned a proposal to combat online criminal activity, in particular terrorism. The Commission found that the internet was being misused to groom and recruit supporters, prepare and facilitate terrorist activity, glorify their atrocities, call on others to follow suit, and instil fear in the public.

This proposal considered three potential policy options, all of which focused on hosting service providers that offer their services in the Union:

- Option 1 would provide a narrow definition of terrorist content, considered "material disseminated with purpose to directly incite a terrorist act produced by an EU listed terrorist organisations". In terms of proactive measures, this option required standardised risk assessments by service providers;
- Option 2 called for a broader definition: "material disseminated with purpose to incite, recruit and train for terrorism, including in particular material produced by EU listed terrorist organisations". Additionally, this option foresaw a requirement for service providers to have procedures to make assessments on referrals from Europol. For proactive measures, there was an obligation to present a remedial action plan;
- Option 3 (preferred option): started from the same definition of terrorist content as option 2. When it came to the removal of terrorist content, this proposal provided for a requirement to have measures, whereas options 1 and 2 required the designation of

[60] Case C-37/24 *Uniunea Producătorilor de Fonograme din România (UPFR) v DADA Music SRL* EU:C:2025:551 [60].
[61] European Commission, "Proposal for a Regulation on preventing the dissemination of terrorist content online" (COM (2018) 640 final); European Commission, "Impact assessment accompanying the document Proposal for a Regulation on preventing the dissemination of terrorist content online" (SWD (2018) 408 final).

competent authorities but no obligation to establish such entities, option 3 contained an obligation for Member States to establish competent authorities with capacity to detect and notify terrorist content. This option also required service providers to have procedures for assessments based on referrals from Member States. On proactive measures, this option contained an obligation to identify and put measures in place to prevent the dissemination of terrorist content on a service provider's platform.

ii. Rights at stake

The Commission recognised that the policy option under consideration raises significant fundamental rights risk. The EU Agency for Fundamental Rights (FRA) issued an opinion on the proposal warning about the potential for overreach and calling for safeguards, clear definitions, accountability, and judicial oversight.[62]

The IA noted that the rights of three parties could be affected:

- The content provider: Article 11 (freedom of expression); Article 8 (protection of personal data); Article 7 (right to respect for private and family life); Article 21 (non-discrimination); and Article 47 (right to an effective remedy).
- The service provider: Article 16 (freedom to conduct a business); and Article 47 (right to an effective remedy).
- Citizens more generally: Article 11 (freedom of expression and information).

iii. Assess the impact

Whereas the measures pursue an objective of general interest (i.e. protecting citizens from the effects of terrorist activities), several of the aforementioned rights would be restricted by all of the policy options in various ways, albeit to different degrees. For instance, erroneously removing material posted by users online that is not in fact terrorist content limits the freedom of expression of content providers as well as the right to information of the broader public. Service providers' freedom to conduct a business is also restricted as there would be an obligation to establish tools aimed at preventing the re-upload content previously identified as terrorist content, which therefore entails increased costs for business; each option was increasingly demanding in terms of proactive measures to be taken. The rights of privacy and personal data protection are also negatively impacted as the policy options require varying levels of processing of personal data. Option 3 went furthest, relying on automated means to detect, identify and remove terrorist content as well as to prevent this content from being re-uploaded. It also involves the preservation of data, in order to re-upload content erroneously removed and for enforcement purposes.

By contrast, certain rights would be positively impacted, in particular the right to life and dignity. This is because the measures would be more effective and result in a larger quantity of harmful content being removed, "potentially preventing terrorist propaganda from translating into action".[63] Option 3 would have the most positive impact on this regard because it would result in more harmful content being removed.

iv. Justification

<u>Justifying the choice of policy option</u>

The IA recommended policy option 3 as the preferred option, especially in light of its effectiveness to remove terrorist content online. Despite having the highest economic impact, it was considered desirable for its ability to bring about the highest benefit. While this option would limit freedom to conduct a business, freedom of expression and information, and the

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[62] FRA, "Proposal for a Regulation on preventing the dissemination of terrorist content online and its fundamental rights implications — Opinion of the European Union Agency for Fundamental Rights" (2019) doi:10.2811/818523.
[63] "Impact assessment" (n 61) p. 41.

rights to data protection and privacy (considered further in the following subsection), it would also have the most positive impact on the rights to life and dignity by identifying terrorist content and facilitating intervention by law enforcement.

Justifying the fundamental rights restriction

The Commission assessed the fundamental rights impact of several of the requirements to be contained under the policy options under consideration.[64] To allow for a more detailed understanding of how fundamental rights impacts are assessed in an IA, we have opted to analyse one of these requirements, i.e. the requirement on hosting service providers (HSPs) to take proactive measures. This requirement was selected due to the fact that it affects all of the fundamental rights identified by the Commission as being negatively impacted. This obligation under policy option 3 included specific proactive measures, in particular identifying and removing content that has already been removed as well as new material, dependent on risk level (as opposed to leaving the choice of whether/which measures to take up to the companies, as was the situation under options 1 and 2).

The Commission's assessment focused especially on legitimate objective pursued by the measure as well as the "necessity" limb of the proportionality test. Here we also include other considerations relevant to the justification analysis, including lawfulness, the other aspects of proportionality, and respect for the essence of the right.

Firstly, Article 114 TFEU (approximation of laws for the improvement of the internal market) was found to be the most appropriate legal basis for an EU intervention in the field of terrorist content online. Based on this Article, it is possible to harmonise the conditions for HSPs to provide services across borders in the Digital Single Market, and to address differences between Member State provisions which might otherwise obstruct the functioning of the internal market. It also prevents the emergence of future obstacles to economic activity resulting from differences in the way national laws might develop. Article 114 TFEU can also be used to impose obligations on services providers established outside the territory of the EU where their service provision affects the internal market, since this is necessary for the desired internal market goal pursued.[65] This way the first requirement for the lawfulness of the restriction was fulfilled.

Secondly, the IA specifically identifies "protecting citizens from the effects of terrorist activities" as an objective of general interest in the sense of Article 52(1) of the Charter.[66] The case law of the Court of Justice supports this conclusion, with the Court having recognised "the fight against international terrorism in order to maintain international peace and security" as an objective of general interest.[67] This is especially in light of the fact that Article 6 of the Charter lays down the right of any person not just to liberty, but also to security.[68]

On proportionality, the IA noted that "proactive measures have proven to be particularly effective".[69] It might have found in favour of the suitability of the restriction of the fundamental rights in question to achieve the objective, reasoning that obliging HSPs to tackle the dissemination of terrorist content through their service by identifying and removing it would indeed contribute to protecting citizens from terrorism. It can be seen as doing so by reducing the amount of content online that incites and facilitates terrorism. As for the necessity of limiting these fundamental rights, in terms of the freedom to conduct a business, necessity can be considered respected given that the IA recommends that the scope of obligations be commensurate to the risk and level of exposure to terrorist content on the HSP as well as the economic capacity of the HSP, hence not going beyond what is strictly necessary. As for freedom of expression, as the IA recommends coupling the obligation with strong safeguards

[64] These included the definition of terrorist content/propaganda as well as the requirements for hosting service providers (HSPs) to respond to removal orders within one hour, to put procedures for Europol referrals in place, to take proactive measures, and to preserve removed content (pp. 102–107)
[65] European Commission, "Proposal for a Regulation on preventing the dissemination of terrorist content online" (COM (2018) 640 final), p. 4.
[66] "Impact assessment" (n 61) p. 106.
[67] Joined Cases C-293/12 and C-594/12 *Digital Rights Ireland* EU:C:2014:238 [42].
[68] Ibid.
[69] "Impact assessment" (n 61) p. 48.

including due diligence to prevent erroneous removal of legal content, it can be forwarded that no less onerous means were available. In regard to data protection and privacy rights, again the inclusion of important safeguards was recommended to ensure the restriction is limited to what is necessary, such as the sufficient definition of risk factors to identify content that fulfils the definition of terrorist content, and a prohibition on profiling without human intervention, and data protection by design for automated tools.

Finally, with respect to the essence of the rights, the substance of the freedom to conduct a business is preserved by virtue of the fact that economic operators are able to continue doing business. Their operations simply entail increased costs, but this is regularly provided for in various legal measures and is not to the point that they cannot afford to operate anymore. As for the freedom of expression and rights to data protection and privacy, since the proactive measures are limited to identifying and removing content that is unlawful, and considering that access to remedies is available for those who think their content was erroneously removed, the essence of these rights appear to remain intact.

Example 5: Proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards accessibility requirements for products and services[70]

i. Introduction

With this proposal, the Commission wanted to improve the accessibility of goods and services for persons with disabilities and the elderly. Three policy options were considered:

- Option 1: A soft-law approach, with an EU recommendation defining common accessibility requirements for the relevant goods and services and in procurement;
- Option 2 (preferred option): An EU Directive defining common accessibility requirements, applicable to the Member States— but only when they regulate accessibility (i.e. when they do or have already done so);
- Option 3: An EU Directive defining common accessibility requirements, immediately applicable to all Member States.

ii. Rights at stake

The impact assessment identified three particularly relevant stakeholders:

- Persons with disabilities: Article 1 (dignity); Article 3 (integrity); Article 14 (right to education); Article 15 (right to choose an occupation and the to engage in work); Article 26 (right to integration of persons with disabilities);
- Elderly persons: Article 25 (rights of the elderly); and
- Economic operators: Article 16 (freedom to conduct a business) and Article 17 (right to property).

The policy options under consideration could improve the rights of persons with disabilities in various ways, e.g. by improving their ability to participate in society, improving autonomy and mental health, and facilitating access to education services, workplace technologies. For elderly persons, accessibility improvements could enhance their independence, dignity, and participation in social and cultural life. As for economic operators, as the policy options

[70] European Commission, "Proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards accessibility requirements for products and services" (COM (2015) 615 final); European Commission, "Impact assessment accompanying the document proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards accessibility requirements for products and services" (SWD (2015) 264 final).

considered imposing obligations on them, this was considered as having the potential to impact their freedom to conduct business and property rights.

iii. Assess the impact

The Commission only assessed the fundamental rights impact of the preferred policy option—option 2. It should be noted that best practice is to consider the fundamental rights impact of all policy options in order to allow for their comparison and selection of the best policy option. Still, this example is interesting owing to the fact that both positive and negative impacts on fundamental rights were identified for different stakeholders.

The Commission indicated that most of the rights identified would be positively impacted. The detailed impact assessment focused on the right to integration of persons with disabilities, the freedom of movement and residence, and the freedom to conduct a business. For persons with disabilities, it would increase the accessibility of goods and services for them, and would also facilitate the independence, social integration, and participation in the life of the community for these persons.

There would also be an indirect positive impact on Article 45 of the Charter freedom of movement and residence) of EU citizens and the entitled nationals of third countries. This is because the harmonisation of accessibility requirements of goods and services across the Member States would benefit citizens as consumers in cross border situations and hence facilitate their free movement. An example provided was that of someone with a visual impairment who would have better access to a website to buy flight tickets.

However, there would be a mixed impact on the rights of economic operators (Article 16 (freedom to conduct a business) and Article 17 (right to property). On the one hand, as noted in the IA, "by increasing the potential of the internal market through the elimination of obstacles to trade, the initiative would be beneficial for the exercise of those two rights." On the other hand, the adoption of new rules in some Member States would lead to the limitation of these rights as well.

iv. Justification

<u>Justifying the choice of policy option</u>

Policy option 2 was chosen on the basis of effectiveness, cost savings, and proportionality. It would both provide a high level of protection in terms of the rights identified above while at the same time ultimately saving businesses money by preventing the emergence of different national accessibility requirements for goods and services. At the same time, it would be less intrusive on national competencies than option 3 by not affecting the timing plans of Member States to implement the relevant UN Convention on the Rights of Persons with Disabilities and also not affecting the way they choose to implement its provisions.

<u>Justifying the fundamental rights restriction</u>

When it came to weighing the restricted rights of economic operators against the objective of promoting the other identified fundamental rights, the Commission considered the restrictions justified. The IA itself highlighted the pursuit of a legitimate objective, the necessity criterion of the proportionality test, and also balanced interests in a way that showed consideration for proportionality *stricto sensu*. Here, we also consider how this analysis could be supplemented by including observations on the lawfulness of the restriction, the other aspects of proportionality (suitability and necessity), and respect for the essence of the rights.

With respect to lawfulness, the Directive finds its legal basis in Article 114 TFEU on the approximation of measures related to the internal market. The Directive provides specific legal grounds for imposing obligations on economic operators, such as duties to conform to certain product and service accessibility requirements.

To demonstrate that the restrictions pursued a legitimate objective, the IA emphasised that they were done with a view to promoting the fundamental rights of others.[71] In this case, this refers to the rights of persons with disabilities as well as the elderly.

As for proportionality, the suitability of the restriction might have been demonstrated by the fact that imposing obligations for products and services to be accessible would indeed serve to protect the rights of those with disabilities by helping them integrate and freely move. As for elderly rights, more accessible products and services would serve to enhance their independence, protect their dignity, and boost their participation in social and cultural life. On necessity, the Commission emphasised that the new rules would be limited to what was necessary to achieve the objective, e.g. by requiring that they do not entail a disproportionate burden to economic operators and entailing progressive implementation. In relation to proportionality stricto sensu, in balancing the interests at stake the Commission noted especially that the interests of economic operators would not only be limited by obligations that entailed increased compliance costs but also ultimately promoted. This was due to the fact that harmonised rules would entail less rule divergence, thereby mitigating the increased costs and weighing in favour of any restriction.

Finally, analysing the compliance of the preferred policy option with respect for the essence of the rights, the very substance of the freedom to conduct a business remains intact as economic operators are still able to sell their goods and services. The right to property's essence was also preserved by virtue of the fact that economic operators are not deprived of their property by virtue of the increased obligations.

Example 6: Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws[72]

i. Introduction

Following a review of a 2006 Regulation on consumer protection cooperation (CPC), the Commission concluded that this measure was no longer fit for purpose. In particular, it was not equipped to deal with modern problems of the digital age. Analyses of online e-commerce websites revealed widespread non-compliance: above 50% in all of the investigated markets. Further and deeper cooperation between national authorities was therefore required.

To achieve the relevant objectives, five policy options were considered by the Commission:

- Option 1: Status quo (no policy change);
- Option 2: Implementing legislation and soft law measures to improve and clarify consumer protection cooperation, combined with self-regulation to increase business compliance;
- Option 3 (preferred option): Revision of the CPC Regulation to extend its scope and strengthen its efficiency;
- Option 4: Option 3 revisions plus additional elements regarding minimum powers and monitoring of Member States' enforcement efforts;
- Option 5: New Regulation providing the Commission with powers to address widespread infringements, combined either with option 3 or with option 4 as regards the existing CPC cooperation.

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[71] European Commission, "Impact assessment accompanying the document proposal for a Directive on the approximation of the laws, regulations and administrative provisions of the Member States as regards accessibility requirements for products and services — Part 3/3" (SWD (2015) 264 final) p. 171.

[72] European Commission, "Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws" (COM (2016) 283 final); European Commission, "Impact assessment accompanying the document Proposal for a Regulation of the European Parliament and of the Council on cooperation between national authorities responsible for the enforcement of consumer protection laws" (SWD (2016) 164 final).

ii. Rights at stake

The groups whose rights were under pressure included:

- Consumers: Article 38 (consumer protection); and
- Economic operators: Article 11 (freedom of expression and information); Article 16 (freedom to conduct a business); Article 17 (property rights); and Article 48 (the presumption of innocence and rights of the defence).

Article 38 of the Charter (the right to a high level of consumer protection) was the main right under pressure from the flaws in the existing CPC regime, in particular due to widespread non-compliance by companies (with an average rate of 37% in key consumer sectors). Identified malpractices included especially unfair practices, unfair contract terms, non-transparent price displays, lack of information on the trader's identity, and lack of information on the legal guarantees in the consumer electronics sector. These practices led to consumers making decisions that they would not have made otherwise (e.g. paying higher prices or stuck with unwanted subscriptions). The deficits in the existing regime also had consequences for other fundamental rights, such as Article 47 (the right to an effective remedy/due process), whereby consumers had difficulties seeking redress in relation to these malpractices.

Rights to be limited by further intervention in the area of CPC included Article 11 (freedom of expression and information), Article 16 (freedom to conduct a business), Article 17 (property rights), and Article 48 (the presumption of innocence and rights of the defence).

iii. Assess the impact

The first policy option (the baseline scenario) would lead to no changes in terms of fundamental rights protection or limitation.

The second option of improving and clarifying CPC combined with self-regulation would have a modest positive impact on Article 38, and no significant impacts on the rights of economic operators because implementing and soft law measures would not extend public authorities' powers for cooperation.

Extending the scope and strengthening the efficiency of the existing CPC Regulation under option 3 was foreseen to have more far reaching fundamental rights consequences. Extending the scope of the Regulation to cover short-lived infringements and infringements of multinational subsidiaries would further protect Article 38 rights, for instance. As this option would also increase the ability for consumers to seek redress for financial detriment suffered as a result of infringements, Article 47 protection would also be boosted. For economic operators, however, this right could be limited by new powers for public authorities to engage in mystery shopping, name infringing traders, and request information from third parties or other authorities. Their Article 48 rights could also be further restricted, as naming infringing traders and publishing decisions could raise concerns for the presumption of innocence. Articles 16 and 17 rights for economic operators could also be impacted, for example through interim measures and taking down websites. These measures would also restrict the free flow of information protected by Article 11.

Option 4 revisions, which were more extensive than option 3, were found to have similar but more far-reaching consequences. Article 38 rights would be further strengthened by providing greater protection for vulnerable consumers (children and the elderly). As option 4 would also involve both naming and shaming allegedly infringing traders, even providing the possibility to do so before a final decision is taken, this would raise concerns for the presumption of innocence protected in Article 48. Private ownership rights under Article 17 would also be further limited through restrictions such as asset freezing and the suspension of economic activity. This was the policy option that was preferred by the Commission.

Finally, option 5, which foresaw a new Regulation providing the Commission with certain powers to address infringements, in combination with option 3 or 4, envisaged further impacts on traders' due process rights.

iv. Justification

Justifying the choice of policy option

Option 3 was chosen as the preferred option that would make the greatest contribution to achieving the policy goals while having the most positive overall impact.

Justifying the fundamental rights restriction

Justifying the restriction of traders' fundamental rights, the Commission's IA focused largely on the legitimacy of the objective pursued and on the necessity limb of the proportionality analysis. In this subsection, we will supplement that assessment by further analysing the lawfulness of the restriction, compliance with the other elements of the proportionality test, as well as respect for the essence of the rights concerned.

The lawfulness of the restriction can be understood as follows. First, the Regulation itself is based on Article 114 TFEU, the internal market harmonisation provision. This is the equivalent to the legal basis used for the former CPC Regulation (Article 95 EC). The 2017 CPC Regulation based on the proposal and IA scrutinised here contains numerous legal provisions grounding the relevant fundamental rights restrictions. For example, Article 9 is where the investigation and enforcement powers of the authorities are provided. This provision gives them the power to (inter alia) access any relevant documents related to an infringement, carry out on-site inspections, adopt interim measures, or to bring about the cessation or prohibition of infringements.[73] Thus, the fundamental rights restriction is provided for by law.

The restrictions of traders' rights that were foreseen by the impact assessment were deemed justified by the overarching objective of general interest of protecting consumers. As the Union is bound to ensure a high level of consumer protection under Article 38 of the Charter, this indeed constitutes a legitimate objective capable of justifying a fundamental rights restriction.

In terms of the proportionality of the interferences, firstly, they can be considered suitable. Carrying out investigations and using enforcement powers with a view to enforcing the EU consumer protection rules does constitute an appropriate way to safeguard consumer rights. As for the necessity of the interferences, the IA highlighted that certain safeguards had to be in place to ensure their proportionality. This included requiring Member States to provide for effective remedies and only allowing certain powers to be invoked if subject to conditions such as necessity, urgency, threat of serious and irreparable harm, and no less intrusive means being available. Similar guarantees would be included to protect the presumption of innocence, such as only allowing the publication of final decisions and the naming of traders where the trader's responsibility was established by a final and enforceable decision. The restrictions to Articles 16 and 17 were also deemed proportionate, as restrictions thereof would only be used as a last resort where no less onerous measures were available. Interim measures and taking down websites would also only be done as a last resort option, thereby ensuring the necessity of the intervention with Article 11 rights. With regard to proportionality stricto sensu, it can be forwarded that a fair balance is struck in light of the benefits brought to consumers by having their rights protected from interference and in light of the fact traders' rights are only interfered with when they are suspected of infringing consumer protection standards.

As for respect for the essence of these rights, the substance of the right to an effective remedy/due process appears to be left intact, since the exercise of the Article 9 powers must be done in accordance with applicable procedural safeguards and the principles of the Charter

[73] Article 9 Regulation (EU) 2017/2394 on cooperation between national authorities responsible for the enforcement of consumer protection laws [2017] OJ L345/1.

— including Article 47.[74] The essence of the presumption of innocence is also respected by the fact that, when it comes to the publication of the names of infringing traders and of decisions is only done where a final (rather than interim) decision has been adopted.[75] As for property rights and the freedom to conduct a business, content removal or restrictions of online interface access are only allowed where no other effective means are available and where there is a risk of serious harm to the collective interests of consumers. As these measures do not strip the undertakings of its property or prohibit business as such (only unlawful practices), the essence of the rights appear to remain respected.

Example 7: Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors[76]

i. Introduction

The Commission sought to take action to prevent the misuse of "explosives precursors" that have been used in the majority of terrorist attacks in the EU. These are substances that can be used in high concentrations to manufacture homemade explosives (HMEs). They also serve a variety of legitimate purposes, however, as they are used in things like fuels, pesticides, shampoos, nail polish removers, etc. While there was already a Regulation adopted on this matter in 2013,[77] continued use of explosives precursors in terrorist attacks suggested that the existing legislation had a number of limitations.

The following three policy options were considered:

- Option 1: Reinforce the application of the Regulation with non-legislative measures, such as establishing sub-group to discuss the threat posed by explosives precursors, tasking EU bodies to report to the standing committee, adopting a recommendation for licensing and registration regimes, and organising workshops;
- Option 2 (preferred option): Strengthen and clarify the restrictions and controls of the Regulation by e.g. expanding the scope of restricted explosives precursors, creating a faster procedure for adding restricted precursors, reducing the scope of and setting an upper concentration limit for licensing, harmonising circumstances to be taken into account when issuing licensing, clarifying the labelling obligation, requiring Member States to set up inspection authorities, and requiring members of the general public and professional users to report disappearances and thefts;
- Option 3: Introduce further controls along the supply chain, such as requiring reporting suspicious transactions, introducing a full ban on restricted precursors for members of the general public, requiring the registration of transactions involving professional users and for these to be forwarded to competent authorities, and obliging the registration of economic operators at the national level.

ii. Rights at stake

Impacts on the rights of the following stakeholders were foreseen:

- Consumers: Article 8 (right to the protection of personal data);
- Economic operators: Article 16 (freedom to conduct a business); and
- Marginalised groups: Article 21 (non-discrimination).

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[74] Article 10(2) Regulation (EU) 2017/2394.
[75] Ibid, Article 9(7).
[76] European Commission, "Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors" (COM (2018) 209 final); European Commission, "Impact assessment: Proposal for a Regulation of the European Parliament and of the Council on the marketing and use of explosives precursors" (SWD (2018) 104 final).
[77] Regulation (EU) No 98/2013 on the marketing and use of explosives precursors [2013] OJ L39/1.

The existing framework already impacted these rights, which would also be further affected by additional measures. For instance, the reporting of suspicious transactions has consequences for personal data protection and non-discrimination. Moreover, freedom to conduct a business was affected as there were certain obstacles to competition between traders involved in the trade of these substances.

iii. Assess the impact

Policy option 1 was found to positively impact fundamental rights. The right to personal data protection would be better protected, as strengthened compliance and enforcement by public authorities would translate into a better application of the rules related to processing personal data in licensing regimes, registration regimes, and the reporting of suspicious transactions. The right to non-discrimination would also be reinforced through better application of the current framework. This is because discriminatory practices caused by prejudice related to physical features or customers' backgrounds would be reduced by clarifying the risk assessment indicators used to report suspicious transactions.

Policy option 2, which would expand the scope of restricted products, was found to not have a much bigger impact on personal data protection. The new measures could lead to both more or less personal data being collected and processed. For instance, discontinuing the registration regime would mean companies no longer have to process personal data of customers from the general public, whereas certain requirements would lead to more data processing (e.g. conducting identity and criminal record checks for members of the general public seeking to acquire these substances with a licence). For the freedom to conduct a business, this option was envisioned to have a negative impact on this freedom because it sought to prohibit sales of certain restricted substances to the general public.

Policy option 3, which included "a full ban on restricted explosives precursors for members of the general public" as well as additional obligations for economic operators, would end collecting personal data for licence requests. But several of the proposed measures involved further collection and processing, e.g. registering transactions with professional users (since the market for professional use is much bigger than that of the general public). This option was also found to have a negative impact on Article 16 of the Charter. This was because it would prohibit sales of the restricted substances to the general public and increase the costs for economic operators.

iv. Justification

Justifying the choice of policy option

When comparing policy options 1 and 2, it was found that option 2 had the highest overall score with only minimal negative impacts on fundamental rights (in particular Article 16) that were outweighed by the positive scores on other assessment criteria (effectiveness, efficiency, and coherence). The third policy option was considered disproportionately restrictive and burdensome for economic operators compared to the security benefits it would bring.

Justifying the fundamental rights restriction

As the proposed measures under policy option 2 prohibit sales of certain substances to the general public, the freedom to conduct a business is limited, although impact was considered small. As the IA did not touch on the justifiability of this fundamental rights restriction, in this subsection we will conduct the analysis.

First, in terms of the lawfulness of the restriction, the legal basis for the Regulation is Article 114 TFEU. The Regulation also contains the necessary provisions for restricting the freedom to conduct a business. For instance, Article 5 specifies that restricted explosives precursors shall not be available to members of the general public, unless they receive a license according to a regime introduced by a Member State.[78] The Regulation also sets out the obligation to verify identities and licenses,[79] and to report suspicious transactions, significant disappearances, and thefts.[80] The fundamental rights restriction is therefore provided for by law.

The restriction also pursues a legitimate objective recognised by Article 52 of the Charter. The specific objectives pursued by the policy measure are closely related to public security and public health, as explosives precursors have been used to create homemade explosives, e.g., to inflict injury through acid attacks.[81] Both public security and public health are classical grounds accepted as justifying restrictions of various rights and freedoms of EU law.[82] These can hence be considered objectives of general interest, and also serve to protect the rights and freedoms of others (e.g., the right to life contained in Article 2 of the Charter).

In terms of the proportionality of the restriction, firstly, on suitability, the restriction appears capable of protecting public security and health by limiting access to restricted substances for those who do not use it for professional purposes and hence might present a risk. As for the necessity for the restriction, there appears to be no less burdensome restriction. If members of the general public were able to purchase the explosive precursors, this would jeopardise the attainment of the objective. Balancing the restriction against the rights and interests protected in accordance with proportionality stricto sensu, a fair balance seems to be achieved. Public security is a weighty objective, with the Court of Justice recognising that protecting security concerns are capable of justifying more serious interferences with fundamental rights than other objectives.[83] Similarly, public health is ascribed a particular importance by the Court, which has stated for instance in the area of free movement restrictions that "the health and life of humans rank foremost among the assets or interests protected by Article 3[4 TFEU]".[84] Given the significance attached to protecting these objectives, and the risks that accompany making them available on the market, partially limiting sales of restricted explosives precursors strikes a fair balance.

As for the essence of the freedom to conduct a business, this can be considered to be respected by virtue of the fact that economic operators are still able to sell the restricted goods to professional users, who would likely account for the majority of their customers in any case. Moreover, in Member States where licenses are available, the economic operators can also sell the goods to members of the general public. As legal measures regularly place limits on who economic operators can sell certain goods to (e.g., medicinal products, chemicals, alcohol, etc) without the essence of the freedom to conduct a business having been found undermined, the restriction in this situation seems compatible with this requirement.

[78] Article 5(1) and (3) Regulation 2019/1148 on the marketing and use of explosives precursors [2019] OJ L186/1 (as amended).
[79] Ibid, Article 8.
[80] Ibid, Article 9,
[81] P. 34. For the specific objectives, see pp. 21–22.
[82] See, e.g., Article 36, Article 45(3), Article 52(1) Article 65(1)(b) TFEU.
[83] Joined Cases C-511/18, C-512/18 and C-520/18 *La Quadrature du Net* EU:C:2020:791, para 136,
[84] Case C-170/04 *Rosengren* EU:C:2007:313, para 39; reiterated in e.g. Case C-333/14 *Scotch Whisky* EU:C:2015:845, para 35.

Examples Without Fundamental Rights Restrictions

Example 8: Proposals for Directives on certain aspects concerning contracts for the supply of digital content and on certain aspects concerning contracts for the online and other distance sales of goods[85]

i. Introduction

In line with one of the core aims of the Commission's Digital Single Market Strategy to improve access for consumers and businesses to online goods and services across Europe, the Commission launched a proposal in this regard specifically on the matter of contracts for the supply of such goods and services.

Differences in national consumer protection rules were identified as significant obstacles to cross-border trade. By having rules that vary depending on the Member State in which a consumer found themselves, some consumers would be subject to lower levels of protection than others. In some Member States, for instance, the burden was on the consumer to show non-conformity with the contract. Because of the legal uncertainty when it came to making cross-border online purchases, consumers hesitated to buy digital content or goods from other EU countries. This left consumers with fewer options and businesses with fewer customers.

To address these problems, five policy options (1 to 5) were considered, decreasing in the level of harmonisation with each policy option:

- Option 1 (preferred option): involved the full harmonisation of contract law rules for the supply of digital content and the online sale of goods. These rules would introduce (i) standards that the relevant goods and services must meet in order to be considered to comply with the contract between the trader and the consumer ("conformity" requirements) as well as (ii) remedies in the event of a lack of such conformity;
- Option 2: for goods, consumer protection would depend on the protection granted by the trader's law, subject to the existing harmonised rules on goods;
- Option 3: would again entail less harmonisation, setting up targeted fully harmonised rules for the supply of digital content but no policy change for goods;
- Option 4: provided for minimum harmonisation for the supply of digital content and again no policy change for goods;
- Option 5: would introduce a voluntary European model contract combined with an EU trust mark.

ii. Rights at stake

The rights of two categories of stakeholders can be identified as being affected by the proposed measures:

- Consumers: most notably Article 38 of the Charter (consumer protection) and Article 47 (effective remedy);
- Economic operators: Article 16 (freedom to conduct a business).

iii. Assess the impact

The full harmonisation of key contract law rules for digital content and the online sale of goods to be provided for under the preferred option 1 would enhance consumer protection throughout the EU, since it would provide EU consumers with clear and specific rights regardless of which Member State they or the seller are in. Consumer protection would be especially enhanced

[85] European Commission, "Proposal for a Directive on certain aspects concerning contracts for the online and other distance sales of goods" (COM(2015) 635 final); European Commission, "Impact assessment accompanying the document proposals for Directives on certain aspects concerning contracts for the supply of digital content and on certain aspects concerning contracts for the online and other distance sales of goods" (SWD (2015) 274 final).

through the provision of remedies. These remedies include the requirement that the supplier must bring the digital content into conformity with the contract. If the supplier does not or cannot bring the content into conformity, the consumer can seek a price reduction or termination of the contract. There is also a right to damages, with consumers being able to claim compensation when non-conforming digital content causes economic damage, e.g. to the hardware of the consumer. While the proposed measures would promote the consumers' rights to consumer protection and to an effective remedy, it would at the same time reinforce economic operators' freedom to conduct a business. This is because selling goods and/or digital content in the EU would be facilitated, helping them expand their business.

Option 2 would involve a lower level of consumer protection, since consumers would only benefit from a higher level of protection when it came to digital content, but not goods. Consumers would only benefit from a higher level of protection than that provided in their Member State if the trader's law provides better protection. As for the right to an effective remedy, this would be less protected when it came to goods since consumers would not be able to make use of the more protective rules in the law of their Member State in cross-border sales contracts. The effect on businesses of this option would be neutral. On the one hand, there would be an expansion of traders' business activities across the EU for goods due to the elimination of the traders' obligation to comply with more protective consumer protection rules when selling goods in other Member States. On the other hand, these would be counterbalanced by the fact that demand-side obstacles (i.e. consumer's lack of confidence) would remain when it came to goods, due to the lower protection.

With each subsequent policy option, the rights of consumers were less and less protected due to weaker applicable consumer protection rules and remedies. Whereas the weakened regulation also could be seen as less red tape for business, this was neutralised by the fact that differences in national consumer contract law rules would hinder online cross-border trade.

iv. Justification

<u>Justifying the choice of policy option</u>

The fact that policy option 1 was deemed to contribute most to the achievement of the policy objectives justified its choice as the preferred option. This option was estimated to not have any negative impacts and to lead to the greatest estimated boost in EU gross domestic product, the highest increase in online cross-border consuming, the greatest decrease in consumer prices, and the most significant improvement in consumer protection.

<u>Justifying the fundamental rights restriction</u>

Because no rights were negatively impacted, a justification analysis was not necessary. Indeed, the preferred policy option 1 positively impacted the rights of consumers and economic operators. While at first glance, legal measures that impose obligations on businesses might appear to interfere with the freedom to conduct a business, sometimes such measures actually facilitate this right, as was the case here. Through fully harmonised rules, businesses would no longer incur the costs associated with adapting their contracts to different national laws when selling in other EU Member States. Greater sales for businesses were also foreseen. This demonstrates the importance of considering all potential impacts of a policy on the different rights of different stakeholders, both positive and negative.

Example 9: Proposal for a Regulation on standards of quality and safety for substances of human origin intended for human application[86]

i. Introduction

This proposal sought to update and strengthen the EU rules governing blood, tissues, cells, and other human-origin substances (SoHOs), making them safer, more resilient, and more harmonised across Member States. The existing rules on blood, tissues and cells were considered outdated, with patients receiving SoHO-based therapies as well as donors being exposed to avoidable risks.

The following three policy options were considered:

- Option 1: a "decentralised regulation" approach, whereby blood and tissue establishments defined their own internal technical standards and guidance, designed the risk assessments, and developed monitoring and notification systems and contingency plans;
- Option 2 (preferred option): a "joint regulation" approach. Under this option, blood/tissue establishments would have to follow technical guidelines developed by expert bodies. The Commission would develop a framework of high-level principles in a regulation, but the more detailed technical standards would be implemented by expert bodies;
- Option 3: central EU regulation that would set technical standards, define the requirements for risk assessments, and develop monitoring and notification systems and contingency plans.

ii. Rights at stake

The stakeholders to be affected included:

- Patients: Article 21 of the Charter (non-discrimination)) and Article 8 (personal data protection); and
- Donors: Article 8 (data protection) and Article 3 (integrity).

In terms of non-discrimination, under existing rules, discriminatory terms and provisions existed. The proposal notes that there was sometimes discriminatory use of the term "partner", for instance. While it does not go into further details, it is imaginable that some jurisdictions would have been interpreting the term "partner" narrowly in a way that excluded LGBTQI+ individuals, discriminating against donors depending on their relationship status or sexual orientation. Personal data protection was also under pressure because under the old system, data on SoHO activities (e.g. donation) were fragmented across the Member States. There was no secure central infrastructure and technical assistance to ensure the data was secure and that provisions of the General Data Protection Regulation (GDPR) were respected. Finally, integrity of the person was at stake because existing rules did not entirely prevent against the commercialisation of the human body, allowing in some instances for there to be costs associated with donations or for donors to be remunerated for their donations.

All of these rights would be impacted in positive ways by the policy options under consideration, with options 2 and 3 providing particularly strong stakeholder confidence in this regard.

iii. Assess the impact

[86] European Commission, "Proposal for a regulation on standards of quality and safety for substances of human origin intended for human application and repealing Directives 2002/98/EC and 2004/23/EC" (COM (2022) 338 final); European Commission, "Impact assessment report accompanying the document proposal for a Regulation on standards of quality and safety for substances of human origin intended for human application" (SWD (2022) 190 final).

If the blood and tissue establishments were left to set their own standards, as contemplated under option 1, there would be less certainty in terms of the level of fundamental rights protection. Options 2 and 3 could both ensure a minimum level of fundamental rights protection.

The identified rights would be promoted by the chosen option 2 in several ways. The proposal would promote non-discrimination by requiring donor-selection criteria be evidence-based, not based on, e.g., sexual orientation or relationship status. Respect for the right to personal data protection would be enhanced by ensuring the processing of donor, recipient, and offspring data is lawful, purpose-limited and necessary. A dedicated EU SoHO platform with built-in data protection safeguards would also be established. Finally, integrity of the person would be promoted because non-commercialisation of the human body, to be laid down as a rule under option 2, prevents treating the human body as a commodity whereby the body is seen as an object of trade. Non-commercialisation ensures the body is treated with inherent dignity. It also prevents the exploitation of vulnerable donors and safeguards the quality and safety of SOHOs by reducing incentives to cut corners e.g. on testing and donor health checks.

Option 2 was preferred, in particular since EU legislation was considered best to address some problems (such as donor protection, follow-up and consent rules) whereas expert bodies were seen as the best source of rules for other matters (e.g. donor age limit and medical/behavioural history screening). Moreover, the level of fundamental rights protection did not necessarily have to be different depending on whether option 2 or 3 were adopted. The joint regulatory approach was therefore preferred.

iv. Justification

Justifying the choice of policy option

The choice of policy option 2 was justified by several considerations. Firstly, a decentralised approach (option 1) would not achieve the objectives—including fundamental rights protection—in an "effective, efficient and coherent manner". At the other end of the spectrum, a fully centralised system (option 3) was not shown to lead to better performance and hence rights protection. Seeking to therefore opt for the option that would best achieve the objectives while simultaneously respecting the competences of the Member States, the joint regulation approach was considered ideal. This approach would still allow for higher national standards, hence leaving open the possibility for even stronger rights protection at the national level.

Justifying the fundamental rights restriction

No negative impacts on fundamental rights were foreseen, therefore not requiring a fundamental rights restriction justification. However, it can be noted that one of the options discarded from the outset was any measure that would involve paid donation. This is because it would negatively impact Article 3 of the Charter (the right to integrity), which prohibits commercialisation of the human body. Article 3 is a non-derogable right, and so a limitation thereof cannot be justified in any circumstances.

Example 10: Revision of the legislative framework on the posting of workers in the context of provision of services[87]

i. Introduction

The revised Posted Workers Directive sought to address a wide range of problems, including those related to four main issues: (i) the implementation, monitoring and enforcement of the

[87] European Commission, "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); European Commission, "Proposal for a Regulation on the exercise of the right to take collective action within the context of the freedom of establishment and the freedom to provide services" (COM (2012) 130 final); European Commission, "Impact assessment: Revision of the legislative framework on the posting of workers in the context of provision of services" (SWD (2012) 63 final).

applicable working conditions of posted workers, including the protection of worker's rights; (ii) abuse of the posted workers status in order to evade or circumvent legislation; (iii) unclear or controversial interpretations of the Directive's terms and conditions of employment; and (iv) tensions between the fundamental freedoms and national industrial relation systems.

The following four options were considered to address the first three problems:

- Option 1: No Policy Change;
- Option 2: Non-regulatory intervention:
    - 2a. Clarifying Member States' obligations via a Commission communication with regard to the Posted Workers' Directive, including the protection of posted worker's rights;
    - 2b. Clarifying the notion of 'posting' to better fight circumvention and abuses of the rules. It would involve building upon the CJEU case law as well as the criteria applied in social security coordination;
    - 2c. Clarifying the Court's interpretation of different aspects of the terms and conditions of employment (T&Cs) of the Directive applicable to posted workers. It would focus especially the notion of 'public policy provisions' concerning national competence to apply other T&Cs and provide more clarity on minimum rates of pay;
- Option 3: Regulatory intervention:
    - 3a. Introducing more precise provisions regarding the Directive. It would inter alia provide rules on access to information on T&Cs, prescribe inspections to verify compliance, provide solutions for fine enforcement, introduce standard administrative sanctions for non-compliance, prescribe further cooperation mechanisms, and provide the possibility to file complaints;
    - 3b. Introducing further criteria to clarify the notion of posting so as to better fight circumvention and abuses of the rules. It would do so through e.g. by indicating the conditions to be verified for posting to take place, lay down provisions on the use of letterbox companies, and align the rules with those on social security;
    - 3c. Modifying the scope and level of T&Cs of employment under the Directive. This option would modify the core of employment T&Cs, provide for the possibility of a more favourable treatment of posted works or equal treatment, exclude certain sectors from the Directive, indicate the different elements of 'minimum rates of pay', and clarify the method of compensation;
- Option 4: Repealing the existing Directive, implying no further mandatory protection of posted workers.

These options were then bundled in the following packages:

A. Regulatory measures to deal with problem 1, combined with non-regulatory measures to deal with problems 2 and 3;

B. Regulatory measures to address problems 1 and 2 and non-regulatory measures to deal with problem 3;

C. Regulatory measures for problems 1 and 3, and non-regulatory measures for problem 2;

D. Regulatory measures to address all three problems.

Several options were also considered for the purposes of addressing the fourth problem:

- Option 5: No policy change;
- Option 6: Non-regulatory intervention: clarifying the exercise of the freedoms of establishment and to provide services alongside fundamental social rights;
- Option 7: Regulatory intervention: Introducing rules designed to clarify how the exercise of the fundamental social right to collective action can be made compatible with the freedoms of establishment and to provide services.

A combination of package B with option 7 was the preferred policy option. Thus, the preferred option was to provide for binding rules on the definition of positing, reducing abuses and circumvention, and establishing an alert mechanism for situations causing serious damage, grave disruption, or social unrest in a Member State. Further, through a Communication it would clarify issues on employment T&Cs, note the compatibility of the freedom to take industrial action and the fundamental freedoms, and emphasise the roles of social partners, national courts, and alternative dispute resolution mechanisms.

ii. Rights at stake

The rights of two stakeholders were particularly relevant to this proposal:

- Workers: Article 15 (freedom to choose an occupation and the right to engage in work); Article 21 (non-discrimination); Article 31 (fair and just working conditions); Article 32 (prohibition of child labour); and Article 47 (effective remedy); and
- Service providers: Article 16 (freedom to conduct a business).

iii. Assess the impact

The IA highlighted that Article 31 of the Charter (fair and just working conditions) was indirectly affected in the baseline scenario (no policy change) by disrespect for the applicable working conditions, the existing gaps in monitoring and enforcement, and the protection of posted workers in situations of conflict with the individual employment conditions.

When considering the potential impacts of package A, it was observed that more transparent information related to applicable working conditions in host Member States and legal certainty on the administrative requirements for foreign service providers would positively impact Article 15 (freedom to choose an occupation and the right to engage in work) and Article 16 (freedom to conduct a business). This option would also have a positive impact on Article 31 as it would improve applicable working conditions for posted works by providing better information, monitoring and enforcement. It was also predicted to better protect local workers and reduce downward pressure on working conditions. As better protection for posted workers in disputes was also foreseen, there would also be better protection of Article 47 (the right to an effective remedy and to a fair trial). Article 21 (non-discrimination) and Article 23 (equality between men and women) would also be positively impacted by the improvement of working conditions and better protection in disputes. Finally, Article 32 (the prohibition of child labour and protection of young people at work) would also be better protected, in particular through better information and enforcement.

Package B would also improve these same rights by reducing abuses and circumvention of the applicable rules through binding rules.

Package C would further improve these rights, in particular Article 31 through a higher level of protection of posted workers that would also have indirect benefits for local workers.

Turning to the measures to address problem number 4, options 6 and 7 would better protect the rights of posted workers as it would clarify that trade unions could continue to defend worker's rights through collective action, such as the right to strike.

It was noted that the positive impact on fundamental rights would be less significant for package A than package B because the former would not provide binding legal clarity in terms of the definition of posting nor provisions to reduce abuses. Packages C and D would provide greater improvements in terms of Article 31 of the Charter through the use of binding legal rules.

Comparing options 6 and 7, option 7 would be more effective at protecting workers' rights as it would give more legal certainty than a communication clarifying the interpretation of the relevant legal rules.

iv. Justification

Justifying the choice of policy option

An option combining package B with option 7 was preferred as it was deemed effective and efficient. These means were more effective in that they would lead to better protection of the rights of posted workers, facilitate cross-border service provision and fair competition, and reduce tensions between national industrial relation systems and the fundamental freedoms. The other options were considered less efficient as they were less effective and generally produced higher costs.

Justifying the fundamental rights restriction

Since fundamental rights were only improved by the relevant options rather than being restricted, no fundamental rights-related justification was necessary. While at face value increased obligations on economic operators in relation to employing posted workers might seem to restrict business, the IA did not determine this to be the case. Instead, it pointed out that Package B would in fact facilitate cross-border service provision and fair competition by improving information, clarifying administrative requirements, providing for better respect of the applicable working conditions and anti-abuse provisions, and providing for binding legal clarity regarding the definition of posting.

Example 11: "Proposal for a Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes" and "Proposal for a Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships"[88]

i. Introduction

In the EU, there has been an increased number of "international couples": spouses of different nationalities, couples living or separating in a Member State different to that of their nationality, and couples owning assets in different Member States. There is also an increase in the number of international marriages dissolving due to divorce or death, which the Commission estimated led to over €460m being at stake each year. Couples separating or facing the death of a partner face many problems related to rules applicable to the couple's assets, facing complex and diverging national laws on property.

To address these problems, the Commission considered seven policy options:

- Option 1: Status quo;

[88] European Commission, "Impact assessment: Proposal for a Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions in matters of matrimonial property regimes and Proposal for a Regulation on jurisdiction, applicable law and the recognition and enforcement of decisions regarding the property consequences of registered partnerships" (SEC (2011) 327 final).

- Option 2: Targeted provision of information to raise citizens' awareness that the property regime may not be the same in other Member States and that they can register their regime;
- Option 3: Harmonisation of jurisdiction rules and introduction of rules on automatic recognition and enforcement of judgments, decisions and deeds;
- Option 4: Harmonisation of conflict of law rules;
- Option 5: Uniform optional European proforma for a marriage contract;
- Option 6: Harmonisation of conflict of law rules and jurisdiction rules, and introduction of rules on automatic recognition and enforcement of judgments;
- Option 7a: Creation of a webpage on existing registers of property regimes and national rules;
- Option 7b: Creation of a database/knowledge management system on existing registers of matrimonial property regimes and national rules;
- Option 7c: Recommendation on the establishment of interconnected national registers of property regimes and the organisation of information campaigns;
- Option 7d: Compulsory establishment of interconnected national registers of property regimes.

The Commission preferred a combination of policy options 3, 6, and 7a.

ii. Rights at stake

The following rights of persons whose marriages dissolve due to divorce or death were at stake: Article 17 of the Charter (the right to property); Article 20 (equality before the law); Article 21 (non-discrimination); and Article 23 (equality between men and women). These rights were being negatively impacted upon separation or death of a partner due to the costs associated with delays and administrative proceedings. The proposed policy options therefore sought to reduce such costs.

iii. Assess the impact

The option 1 status quo would mean that Article 17 rights would not be fully protected, as different jurisdictions or laws may apply to the same property, delaying access to property. The rights in Articles 20, 21, and 23 would also not be fully respected, as in situations of divorce or separation one party can "rush to a court that may be more favourable" to them.

Better information facilitated by Option 2 would strengthen Article 17, as it would help couples to decide on whether to conclude a marriage or partnership contract agreeing on the measures to be taken in terms of their property in the event of separation or death.

Harmonisation via option 3 that extends the jurisdiction of the court dealing with separation or succession to also have jurisdiction over liquidation of the property would reduce the cost to parties in terms of delays and administrative proceedings. This cost reduction would positively impact Articles 17 and 20.

Likewise, harmonising conflict of law rules through option 4 would have similar effects in this regard. However, a negative impact on Article 17 can also be foreseen as this option does not include rules on recognition and enforcement, which could delay the proceedings and hence access to property.

Similarly, Articles 17 and 23 would be positively impacted by option 5, by allowing parties to choose the applicable law and thereby reducing costs.

No distinct assessment of fundamental rights impacts was done for option 6. However, this would be because this option simply combines options 3 and 4, for which the analysis of the impact on fundamental rights was already conducted.

Option 7a would have a "minor positive impact on Article 17" as easier access to information would facilitate quicker access to property. The impacts of option 7b were deemed the same. A Commission recommendation adopted for the purposes of option 7c would also positively impact Article 17 by allowing property regimes to be identified at a higher degree. Option 7d would further solidify this possibility by making the register recommended in option 7c compulsory.

iv. Justification

Justifying the choice of policy option

The preferred option was a combination of options 3, 6, and 7a, into two Regulations (one for married couples, the other for registered partnerships) and the creation of a website. This option was deemed to better address many of the identified problems. In terms of fundamental rights, it would significantly reduce costs to the parties in terms of delays and administrative proceedings, positively impacting Articles 17, 20, and 23 of the Charter. While an EU wide matrimonial property regime (option 5) would reduce the problems further than the preferred option, it was deemed politically and culturally unfeasible.

Justifying the fundamental rights restriction

As no negative impacts on fundamental rights were foreseen, the Commission did not have to justify any restrictions.

4. Additional Resources

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