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

**2012 Report on the Application of the EU Charter of Fundamental Rights**

{SWD(2013) 171 final}  
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# **REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE COMMITTEE OF THE REGIONS**

## **2012 Report on the Application of the EU Charter of Fundamental Rights**

### **1. INTRODUCTION**

In its Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union ('the Charter'), the Commission announced that it will report each year on the concrete steps undertaken for the effective implementation of the Charter<sup>1</sup>. Through these reports, the Commission meets the longstanding and legitimate expectations of placing fundamental rights at the heart of EU policies, which have been voiced in particular by the European Parliament<sup>2</sup>. A systematic implementation of the Charter calls not only for rigorous legal scrutiny, but equally for political scrutiny to ascertain the impact of all EU initiatives on fundamental rights.

This annual report is the basis for the necessary dialogue between all the EU institutions and Member States on the implementation of the Charter. It therefore forms part of the process of political dialogue and scrutiny to ensure that the Charter remains a reference point, to integrate fundamental rights into all EU legal acts and when Member States apply EU law. It also presents how a fundamental rights culture is being developed in the EU by setting new legislation, where the EU has competence to act, and through the jurisprudence of the Court of Justice of the European Union ('the Court'). Given the key role to be played by Member States' courts in scrutinising the respect of the Charter when Member States apply EU law, this report also provides an overview for the first time of the case law of national courts on the Charter.

The staff working document annexed to this report provides detailed information on the application of the Charter and illustrates concrete problems faced by individuals (see Annex I). Progress in the implementation of the Strategy for Equality between Women and Men (2010-2015) is presented in a second separate staff working document (see Annex II).

### **2. EU ACTIONS TO PROMOTE THE EFFECTIVE IMPLEMENTATION OF THE CHARTER**

The Charter is addressed, first and foremost, to the EU institutions. It is therefore the primary responsibility of the EU institutions to ensure respect for fundamental rights as a legal requirement based on the binding Charter.

The Commission's strategy is aimed at giving practical effect to the legally binding Charter<sup>3</sup>. The concrete steps to implement the Charter have fostered a fundamental rights reflex when the Commission prepares new legislative and policy proposals. This approach is essential throughout the EU decision making process, including when the European Parliament and Council make amendments to proposals prepared by the Commission. All EU acts are also subject to the scrutiny of the Court. This is the ultimate guarantee for the respect of fundamental rights in the EU's legislative work and all other acts of the EU.

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<sup>1</sup> Communication adopted by the Commission on 19.10.2010 – Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union – COM (2010) 573 final.

<sup>2</sup> Voggenhuber Report of the European Parliament – Document ref: A6-0034/2007.

<sup>3</sup> See footnote 1.

Fundamental rights are promoted through all EU policies. The Commission's policy of giving substance to the status of Union citizenship is complementary to the promotion of fundamental rights within the EU. Most fundamental rights enshrined in the Charter do not only apply to EU Citizens, but are of great importance for the protection of all people living in the EU, whether they are Union Citizens or not.

## 2.1. Strengthening the protection of fundamental rights through EU legislation

A true fundamental rights culture consists not only of ensuring compliance of legislation with the Charter. Where the EU has competence to act, the Commission can also propose EU legislation that gives concrete effect to the rights and principles of the Charter. This is a crucial step for citizens to exercise their rights under the Charter.

In order to give full effect to the Charter in the digital age, the Commission has proposed a **major reform of the EU's rules on the protection of personal data**<sup>4</sup>. Europe's historical experience has led to a common understanding in Europe that privacy is an integral part of human dignity and personal freedom. This is why the Charter recognises both the right to private life (Article 7) and the right to the protection of personal data (Article 8). The Treaty (Article 16, TFEU) gives the EU complementary legislative competence to establish harmonised EU data protection laws.

The Commission's proposals update and modernise the principles enshrined in the 1995 Directive to guarantee the right of personal data protection in the future<sup>5</sup>. This reform provides for increased responsibility and accountability for those processing personal data and strengthens independent national data protection authorities. It introduces the 'right to be forgotten', which will help people better manage data protection risks online. The reform extends general data protection principles and rules to national police and criminal justice authorities. The new rules have been drafted to ensure a careful balance with all fundamental rights they may affect, such as freedom of expression. A meaningful example of this is that specific safeguards have been introduced in the proposal for data that is processed solely for journalistic purposes.

In 2012, the **Commission took a pro-active approach to accelerate progress towards a better gender balance on the corporate boards of European companies listed on stock exchanges**<sup>6</sup>. The Commission's legislative proposal is a milestone in EU legislation on gender equality. It reconciles, on the one hand, the requirement of equality of treatment, and on the other hand, the possibility to take positive action - by promoting the under-represented sex - in order to bring about de facto equality.

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<sup>4</sup> a) Communication on Safeguarding Privacy in a Connected World – A European Data Protection Framework for the 21st Century, COM (2012) 09 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52012DC0009:en:NOT>; b) Proposal for a Regulation of the European Parliament and of the Council on the protection of individuals with regard to the processing of personal data and on the free movement of such data, COM (2012) 11 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0011:FIN:EN:DOC> c) Proposal for a Directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM (2012) 10 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0010:FIN:EN:DOC>

<sup>5</sup> Directive 95/46/EC on the protection of individuals with regard to the processing of personal data and on the free movement of such data, OJ L 281, 23.11.1995, p. 31-50.

<sup>6</sup> Proposal for a Directive on improving the gender balance among non-executive directors of companies listed on stock exchanges and related measures, COM (2012) 614 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2012:0614:FIN:en:PDF>.

The proposal sets an objective of 40% for the minimum share of the under-represented sex among non-executive board members of such companies by 2020 (by 2018 for listed companies which are public undertakings). In order to meet the 40% objective it obliges listed companies with a lower percentage of the under-represented sex among non-executive directors to make appointments to those positions on the basis of a comparative analysis of the qualifications of each candidate. This will be achieved by applying pre-established, clear, neutrally formulated and unambiguous criteria; and in case of equal qualifications by giving preference to the candidate of the under-represented sex.

**Safeguarding procedural rights remains a priority for the EU.** The Directive on the right to information in criminal proceedings, adopted on 22 May 2012, requires that anyone arrested is informed about their rights in a language that they understand<sup>7</sup>. In addition, the new Directive establishing minimum standards on the rights, support and protection of victims of crime, adopted on 25 October 2012, ensures that victims are given non-discriminatory minimum rights across the EU, irrespective of their nationality or country of residence<sup>8</sup>. It guarantees that victims are recognised and treated with respect when they come into contact with the police, prosecutors and the judiciary. It also gives them the procedural rights to be informed, supported and protected and ensures that they can actively participate in criminal proceedings. The Directive focuses on the support and protection of victims who are vulnerable to secondary or repeat victimisation or intimidation during criminal proceedings. These vulnerable groups include children and victims of gender-based violence, violence in a close-relationship, sexual violence or exploitation, hate crime and victims with disabilities.

EU policies and EU legislation need to be based on **objective, reliable and comparable data** on the respect of fundamental rights in the EU. The **EU Agency for Fundamental Rights ('the Agency')** has been established to provide such data. Following the entry in to force of the Lisbon Treaty, it should be able to perform its tasks in all areas of EU competences where fundamental rights are at stake. To achieve this, the Commission proposed that the Agency could work in the areas of police cooperation and judicial cooperation in criminal matters<sup>9</sup>. The Council did not endorse this approach and decided to exclude these two major fields of competence of the Union from the Agency's Multiannual framework, which determines the thematic areas on which it can work during the period 2013-2017. The good functioning of the Agency was further put at risk due to the delay in the adoption of the new Multiannual framework. As a consequence, the Agency was not in a position to carry out its tasks under normal conditions and had recourse, for carrying out its tasks, to an *ad hoc* request, adopted by the Council at the end of 2012. The Council proceeded with the adoption of the new Multiannual framework on 11 March 2013, after the United Kingdom lifted its parliamentary reservation<sup>10</sup>.

## 2.2. The fundamental rights dimension of the EU external actions

The Charter applies to all actions of the European Union, including in the field of external relations.

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<sup>7</sup> Directive 2012/13/EU on the right to information in criminal proceedings, OJ L 142, 1.6.2012, p. 1-10.

<sup>8</sup> Directive 2012/29/EU establishing minimum standards on the rights, support and protection of victims of crime, and replacing Council Framework Decision 2001/220/JHA, OJ L 315, 14.11.2012, p. 57-74.

<sup>9</sup> Proposal for a Council Decision establishing a Multiannual Framework for the European Union Agency for Fundamental Rights for 2013-2017, COM (2011) 880 final. Available at: <http://eurlex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0880:FIN:EN:HTML>.

<sup>10</sup> Council Decision establishing a Multiannual Framework for 2013-2017 for the European Union Agency for Fundamental Rights, adopted on 11 March. Available at: <http://register.consilium.europa.eu/pdf/en/12/st10/st10449.en12.pdf>

Building on a joint Commission/EEAS Communication, the Council adopted a **Strategic Framework on Human Rights and Democracy and an Action Plan** designed to improve the effectiveness and consistency of EU human rights policy as a whole in the next years<sup>11</sup>. As one of the first actions under the new EU Strategic Framework and Action Plan, the Council appointed Mr Stavros Lambrinidis as EU Special Representative (EUSR) for Human Rights<sup>12</sup>.

In a case concerning the **freezing of assets** of a company and its majority shareholder, decided by the Council **in the framework of common foreign and security policy**, the Court annulled the measures taken on the grounds that the Council produced no information or evidence. In doing so, the Court upheld that the principle of effective judicial protection (Article 47 of the Charter), means that the ground for a restrictive measure must be communicated to the entity and person concerned<sup>13</sup>. This is necessary both to enable the addressees to defend their rights and also to put the Court in a position to review the lawfulness of the measure in question. This judicial review extends to the assessment of the facts and circumstances relied on as justifying it, and to the evidence and information on which that assessment is based.

On 4<sup>th</sup> July 2012, the **European Parliament rejected the draft Anti-Counterfeiting Trade Agreement (ACTA)** which aimed at improving global standards for the enforcement of intellectual property rights to more effectively combat trade in counterfeit and pirated goods. In doing so the European Parliament used the Charter when exercising its new prerogatives on international trade agreements<sup>14</sup>. The EP referred in particular to the need for an appropriate balance in the draft trade agreement between freedom of expression and information and the right to property. The Commission was also attentive to these concerns and had already asked the Court to assess whether the ACTA agreement was compatible with the Charter. The Commission withdrew its request for an opinion of the Court, after the European Parliament made clear it could not accept the draft agreement.

### 2.3. The Court's control of EU acts for compliance with the Charter

The rulings delivered by the Court in 2012 that concerned the compliance of EU acts with the Charter, gave guidance on how to take into account fundamental rights in the EU's legislative work and all other acts of the EU, which have legal effects.

The Court made clear that the Charter must be taken into account when the legislator decides to **delegate powers** to the Council or to the Commission. It annulled a Council implementing decision on surveillance of the external sea borders of the EU on the basis that the adoption of rules conferring enforcement powers on border guards entails political choices falling within the responsibilities of the European Union legislature and that these rules were likely to affect personal freedom and fundamental rights to such an extent that the involvement of the European Union legislature is required<sup>15</sup>.

The Court also examined whether the EU institutions actually respect the **principle of non-discrimination** in their recruitment policy. The Court annulled the notices of several open competitions to become a civil servant of EU institutions which have been published in full

<sup>11</sup> Joint Communication on Human rights and democracy at the heart of EU external action – towards a more effective approach, COM (2011) 886 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2011:0886:FIN:EN:PDF>. Strategic Framework and Action plan on Human Rights and Democracy Council Document n°11417/12 EXT 1 of 28.6.2012. Available at: <http://register.consilium.europa.eu/pdf/en/12/st11/st11417-ex01.en12.pdf>

<sup>12</sup> Council Decision 2012/440/CFSP of 25.7.2012 appointing the European Union Special Representative for Human Rights, OJ L 200, p. 21-23

<sup>13</sup> CJEU, Case T-439/10 and T-440/10, *Fulmen and F. Mahloudian v Council*, 21.3.2012.

<sup>14</sup> Recommendation of the European Parliament, document ref: A7-0204/2012 of 22.6.2012.

<sup>15</sup> CJEU, Case C-355/10, *European Parliament v. Council of EU*, 5.9.2012.

only in three official languages<sup>16</sup>. The Court found that a potential candidate whose mother tongue was not one of the languages of full publication of the contested competition notices was at a disadvantage compared to a candidate whose mother tongue was one of those three languages. That disadvantage was the consequence of a disproportionate difference in treatment on the ground of language, prohibited by Article 21 of the Charter.

The Court also controlled the application of the **principle of good administration** by the EU institutions (Article 41 of the Charter). It annulled the decision of the Commission to reject an offer in the context of an invitation to tender for public service procurement, because the Commission did not provide sufficient justification for its decision<sup>17</sup>. The Court established a link between Article 41 (good administration) and Article 47 (access to justice) of the Charter, insofar as the reasons given by the administration are necessary for the person concerned to decide whether to challenge the decision before the relevant courts.

**Several rulings given by the Court in the past years triggered adaptations to EU legislation.** In this respect, the European Parliament, the Council and the Commission incorporated the Court's case law when negotiating on the new 'Dublin Regulation' on the conditions for the transfer of asylum seekers in the EU<sup>18</sup>. As a result, under the newly agreed rules, asylum seekers cannot be sent back to a Member State where there is a serious risk of violation of their fundamental rights. Instead, the responsibility to give quick access to an asylum procedure should be exercised by another Member State.

The Commission also incorporated the Court's case law when preparing its modified proposal on the publication of the beneficiaries of European agricultural funds<sup>19</sup>. The new proposed rules are based on a revised detailed justification, centred on the need for public control of the use of European agricultural funds in order to protect the Union's financial interests. They require more detailed information to be given on the nature and description of the measures for which the funds are disbursed. However, below a minimum threshold the name of the beneficiary will not be published. This provision follows proportionality considerations, namely between the objective of the public control of the use of public funds, on the one hand, and the beneficiaries' right to respect for their private life in general and to protection of their personal data on the other hand.

### 3. IMPLEMENTATION OF THE CHARTER IN THE MEMBER STATES

Within the EU, the protection of fundamental rights is ensured by a two-layered system: the national system based on Member States' constitutions and international legal obligations, such as the European Convention on Human Rights (ECHR); and the EU system based on the Charter, which comes into operation only in relation to actions by EU institutions, or when Member States implement EU law. The Charter complements existing systems for the protection of fundamental rights, it does not replace them.

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<sup>16</sup> CJEU, Grand Chamber, Case C-566/10 P, *Italian Republic v Commission*, 27.11.2012.

<sup>17</sup> CJEU, Case T-183/10, *Sviluppo Globale GEIE v Commission*, 10.10.2012.

<sup>18</sup> CJEU, joined Cases C-411/10 and C-493/10, *N.S. v Secretary of State for the Home Department and M.E. e.a. v Refugee Applications Commissioner*, 21.12.2011. Proposal for a Regulation 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, COM (2008) 820 final. Available at: <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2008:0820:FIN:EN:PDF>

<sup>19</sup> CJEU, joined Cases C-92/09 and C-93/09, *Volker und Markus Schecke GbR & Hartmut Eifert v. Land Hessen & Bundesanstalt für Landwirtschaft und Ernährung*, 10.11.2010. Amendment to the Commission proposal COM (2011) 628 final/2 for a Regulation on the financing, management and monitoring of the common agricultural policy, COM (2012) 551 final. Available at: [http://ec.europa.eu/agriculture/funding/regulation/amendment-com-2012-551\\_en.pdf](http://ec.europa.eu/agriculture/funding/regulation/amendment-com-2012-551_en.pdf).

The **limits of the scope of application of the Charter have been underlined by the Court.** It declared inadmissible a preliminary reference from a Bulgarian Administrative Court concerning the right to a judicial remedy in respect of decisions imposing criminal sanctions for certain breaches of road traffic regulations, referring to settled case law, which is that the requirements flowing from the protection of fundamental rights are binding on Member States whenever they implement EU law<sup>20</sup>.

The provisions of the Charter are addressed to the Member States only when they are implementing EU law and neither the Charter nor the Treaty creates any new competence for the EU in the field of fundamental rights. Where the national legislation at stake does not constitute a measure implementing EU law or is not connected in any other way with EU law, the jurisdiction of the Court is not established<sup>21</sup>.

The important **implications of the Charter are to be seen in the increasing number of requests for a preliminary ruling of national jurisdictions received by the Court.** For example, in the field of asylum the Court upheld that whenever an application for asylum is lodged at the border or in the territory of a Member State, that Member State is obliged to grant the minimum conditions for reception of asylum seekers laid down in EU law regardless of whether a Member State is responsible for examining the application for asylum under EU law<sup>22</sup>. In particular, the need to uphold fundamental principles of human dignity (Article 1) and the right to asylum (Article 18) means that, the obligation under EU law<sup>23</sup> to provide an asylum seeker with housing, food, clothes and a daily expenses allowance, and the subsequent financial onus, are to be borne by the requesting Member State until the asylum seeker is transferred to the Member State responsible for examining their application.

### **3.1. Actions taken by the Commission to ensure the respect of the Charter by the Member States**

The Commission also makes sure that the Charter is respected in its role as guardian of the Treaties and is determined to intervene to this effect where necessary when it has the power to do so. For the first time, in 2012, the Commission was called upon to take infringement cases to the Court of Justice, which concerned the non-compliance of a Member State with key provisions of the Charter.

Over the past years, **Hungary adopted several laws** – some of them so-called cardinal laws adopted directly under its new constitution – **which raised important fundamental rights concerns** and also came under the scrutiny of the Council of Europe. The Commission carried out its legal analysis on those points where there was a link with EU law, in accordance with the scope of application of the Charter (Article 51) and the Commission's role as guardian of the Treaties. Following first warning letters in the end of 2011, the Commission decided on 7<sup>th</sup> June 2012 to bring infringement procedures before the Court. The Commission firstly challenged interferences with the independence of the Hungarian data protection authority, on the ground that the “complete independence” of national data protection authorities is a requirement under the 1995 Data Protection Directive and is recognised explicitly in Article 16 TFEU as well as in Article 8 of the Charter. In a second infringement proceeding, the Commission contested the early retirement of around 274 judges and public prosecutors in Hungary caused by a sudden reduction of the mandatory retirement age for this profession

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<sup>20</sup> CJEU, Case C-27/11, *Vinkov*, 7.6.2012

<sup>21</sup> See also CJEU, Case C 370/12, *Pringle v Ireland*, 27.11.2012

<sup>22</sup> CJEU, Case C-179/11 *Cimade and Groupe d'information et de soutien des immigrés (GISTI) v. Ministre de l'Intérieur, de l'Outre-mer, des Collectivités territoriales et de l'Immigration*, 27.09.2012

<sup>23</sup> Council Directive 2003/9/EC laying down minimum standards for the reception of asylum seekers, OJ L 31, 6.2.2003, p. 18 – 25.



from 70 to 62. The basis for the Commission's action was Directive 2000/78/EC on equal treatment in employment which prohibits discrimination at the workplace on grounds of age. This also covers the dismissal for age related reasons without an objective justification. This case thus helps to implement the general prohibition of discrimination, including on grounds of age, as guaranteed by Article 21 of the Charter. The Court's ruling of 6 November 2012 upheld the Commission's assessment according to which the mandatory retirement age for judges, prosecutors and notaries within a very short transitional period is incompatible with EU equal treatment law. Hungary will have to change these rules to comply with EU law<sup>24</sup>.

Media freedom and pluralism also formed the basis of the discussions between the Commission and the Hungarian authorities on the new media legislation as regards the obligation of balanced coverage and the rules on offensive content. Some modifications were also agreed between the Commission and the Hungarian authorities on other provisions which could otherwise constitute an infringement of the Audio-visual Media Services Directive and/or the rules on free circulation of services and establishment.

As regards the issue of judicial independence in Hungary more generally, the Commission expressed its concerns in a number of letters in 2012, in particular the powers of the Hungarian President of the National Judicial Office to reallocate cases from one court to another and to transfer a judge against his or her will. The Commission pointed out that these measures could affect the effective application of Union law in Hungary and the fundamental rights of citizens and businesses to an effective remedy by an independent court in cases based on Union law, as guaranteed by Article 47 of the Charter. Discussions have also taken place between the Council of Europe (in particular the Venice Commission) and the Hungarian authorities. The Commission keeps the matter under close review, in particular to verify compliance with the right to an effective remedy.

Likewise, immediately upon having been made aware, in August 2012, about **developments in France** on the dismantling of Roma settlements and about returns of Roma to their home country, the Commission wrote to the French authorities and discussions took place enabling to clarify the facts and the legal framework. The situation has changed considerably in the last few years. Further to the Commission's action in 2010 to guarantee the application of free movement directive by all Member States, and to put in place a European Framework for National Roma Integration Strategies, France modified its law to guarantee full compliance with the free movement directive, notably as concerns procedural safeguards related to expulsions of EU citizens, and adopted its national Roma Integration Strategy. On the basis of this new Strategy, close cooperation and enhanced efforts on Roma inclusion is taking place with the active participation of France.

In 2012, the Commission also launched **infringement proceedings against Malta** on the grounds of its failure to correctly implement the EU free movement rules and more particularly the **right of same-sex spouses or registered partners to join EU citizens in Malta and reside there with them**. As a result of the Commission's action, the Maltese legislation was modified and is now compatible with EU rules on the rights of EU citizens to free movement and non-discrimination.

### **3.2. Development of national case law on the application of the Charter by the Member States**

The community of law, on which the Union is based, relies on national courts. Only if national judges fully exercise their powers, can the rights that Union law grants to citizens be

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<sup>24</sup> CJEU, Case C 286/12, *European Commission v. Hungary*, 6.11.2012



effectively guaranteed. The national constitutional and supreme courts have a special responsibility for cooperating with the Court to ensure effective application of the Charter.

Data gathered by **the Association of Councils of States and of Supreme Administrative Courts** (ACA) show that the Charter has by now been referred to in numerous judgements by administrative courts in EU Member States<sup>25</sup>. The provisions of the Charter most frequently mentioned in the reports are respect for private and family life (Article 7), freedom of expression and information (Article 11), right to property (Article 17), right to asylum (Article 18), prohibition of collective expulsion and *non-refoulement* (Article 19), rights of the child (Article 24), right to good administration (Article 41) and right to an effective remedy and to a fair trial (Article 47).

The branch of law in which the Charter has been referred to most to date is immigration and asylum<sup>26</sup>. The analysis provided by the EU Agency for Fundamental Rights on information provided by some Member States on case law on the Charter also shows that the implications of the Charter go well beyond this area, and concern very diverse areas such as regulations on financial markets, labour law, consumer protection, environment law and children's custody<sup>27</sup>.

The analysis of court rulings referring to the Charter further suggests that national judges use the Charter to support their reasoning, including when there is not necessarily a link with EU law. There is also some evidence of an **incorporation of the Charter in the national systems of fundamental rights protection**. The Austrian Constitutional Court handed down a landmark decision regarding the application of the Charter in the frame of domestic judicial review of constitutionality<sup>28</sup>. It recognised the very special role of the Charter within the EU legal system, and its different nature compared to the body of rights and principles which the Court of Justice of the EU has been developing throughout the years. It took the view that the Charter is enforceable in the proceedings brought before it for the judicial review of national legislation, and therefore individuals can rely upon the rights and the principles recognised in the Charter when challenging the lawfulness of domestic legislation. The Austrian Constitutional Court identified strong similarities between the role played by the Charter in the EU legal system and that played by the ECHR under the Austrian Constitution, according to which the ECHR has force of constitutional law.

#### 4. ACCESSION OF THE EU TO THE EUROPEAN CONVENTION ON HUMAN RIGHTS

The Treaty of Lisbon has imposed **a clear obligation on the EU to accede to the ECHR**. All Member States agreed to this when they ratified the Treaty of Lisbon.

Negotiations on the accession agreement were stalled in the first half of the year, as certain Member States had expressed doubts and raised questions on the draft agreement, drawn up at technical level in June 2011. Eventually agreement was reached in the Council in April 2012 so negotiations could resume in June 2012 in a 47 + 1 format (47 Members of Council of Europe and the Commission on behalf of the EU).

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<sup>25</sup> See for details the reports to ACA Europa. Available at: [http://www.aca-europe.eu/en/colloquiums/colloq\\_en\\_23.html](http://www.aca-europe.eu/en/colloquiums/colloq_en_23.html)

<sup>26</sup> Apart from Spain, Hungary and Austria, the Charter has been referred to in this branch of law in every country.

<sup>27</sup> See in particular: *The Protection of Fundamental Rights Post Lisbon: the Interaction between the Charter of Fundamental Rights of the European Union, the European Convention on Human Rights and National Constitutions Vol I*, ed. Laffranque, Julia, Reports of the FIDE Congress Tallinn 2012, University of Tartu

<sup>28</sup> Austrian Constitutional Court, Cases U 466/11 and U 1836/11, 14.3.2012

In parallel, work has been undertaken on the core elements of the internal rules intended to govern the participation of the EU and Member States in proceedings before the Court of Strasbourg in situations where Union law is called into question.

Against this background, the unanimity required for the conclusion of the accession agreement to the ECHR and its accompanying measures should not serve as an excuse to delay the process, which is a clear and mandatory objective enshrined in the Treaty.

## 5. CONCLUSION

After just three years in force as primary law, the take up of the Charter by national courts when EU law is involved can be seen as a positive sign. The increasing reference to the Charter gives a first indication of an effective, decentralised application of the Charter within the national constitutional orders. This is an important step on the road to a more coherent system for the protection of fundamental rights which guarantees equal levels of rights and protection in all Member States whenever EU law is being implemented.

The 2012 State of the Union address of President Barroso underlined that the foundations on which our Union is built - the respect of fundamental rights, the rule of law and democracy - must continuously be protected and strengthened<sup>29</sup>. That is why the Commission is committed to lead by example in ensuring that all EU acts comply with the Charter. The Commission remains determined to take decisive steps to give concrete effect to the Charter when it has the competence to do so. Likewise, the Commission is committed to intervene where necessary when Member States implement EU law in order to ensure the effective implementation of the Charter, as in the action it brought before the Court contesting the early retirement of judges and public prosecutors in Hungary.

The Commission will keep the development of fundamental rights protection in the EU, including the evolving case-law on the application of the Charter both at Union and at national level<sup>30</sup>, under close review and calls upon the European Parliament and the Council of Ministers to discuss the present report in detail.

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<sup>29</sup> Available at: [http://europa.eu/rapid/press-release\\_SPEECH-12-596\\_en.htm](http://europa.eu/rapid/press-release_SPEECH-12-596_en.htm)

<sup>30</sup> Speech of Vice-President Viviane Reding at the XXV Congress of FIDE (Fédération Internationale pour le Droit Européen) Tallinn, 31 May 2012. Available at: [http://europa.eu/rapid/press-release\\_SPEECH-12-403\\_en.htm?locale=en](http://europa.eu/rapid/press-release_SPEECH-12-403_en.htm?locale=en)