FUNDAMENTAL RIGHTS: THE HEART OF EUROPE

Campaign paper

for the incorporation of fundamental rights in the European Union and European Community Treaties

Foreword

Introduction

1. General Principles

2. Explicit fundamental rights

3. Binding political objectives

4. Rights in the Union’s external policies
Fundamental Rights: The Heart of Europe

The European Trade Union Confederation and the Platform of European Social NGOs have prepared this campaign document to animate a debate amongst our members. We are launching a concerted campaign throughout the fifteen countries of the Union in order to involve our constituencies and seek their opinions so that we may make informed representations to the EU Convention which is drafting the European Charter of Fundamental Human Rights.

The social implications of the realisation of Economic and Monetary Union and the introduction of the EURO underpin the importance of securing fundamental rights at European level. We consider fundamental rights as an indispensable part in the building of the Social Union and safeguarding and developing the European social model. Their incorporation will also be important in view of enlargement. The respect of fundamental rights is necessary for a Citizens’ Europe to become a reality.

It is time for action. A Charter, which guarantees civil, social, economic, political and cultural rights will counter the apathy and scepticism which appears so prevalent. It is time to put ideals back into Europe.

Some people argue that a new Charter is unnecessary, as the European Convention on Human rights and the European Social Charter already exist. But these documents are neither broad enough, or sufficiently legally enforceable, to guarantee the full range of civil, political, social and economic rights. An EU Charter of Fundamental Human Rights would, for the first time, give all who are living in the EU a common framework of enforceable and wide-ranging rights.

This campaign document does not intend to be a definitive text. It is meant to inform and inspire debate. Over the coming months we will hold conferences, seminars and meetings in all the EU Member States to discuss what rights should be in the EU Charter of Fundamental Rights and how these rights should be made enforceable in law.

The prosperity of Europe has been built on our ability to balance our need to be economically competitive with that of ensuring we live in a society based on solidarity with access to basic social rights for all. This balance is being threatened by some of the effects of globalisation and must be redressed by ensuring that the whole range of civil, political, social, economic and cultural rights are guaranteed for all. It is time to put fundamental rights at the heart of Europe.
INTRODUCTION

The June 1999 EU Summit decided that a Charter of fundamental rights for Europe should be drawn up. Support for the European integration project had been put at risk by the social effects of introducing the Single Currency and by finalising the Single Market. Citizens had lost trust in Europe. It was now important to reassert the social dimension of the European integration by underlining the importance of protecting fundamental rights at the European level.

At stake and at issue was going to be the nature of the Charter to be prepared. Would it be a simple proclamation or would it be a legally binding set of rights, which could be seen to protect and advance human rights in the Union? There were differences of opinion among EU Leaders, with the result that, the Summit left the delicate issue of the status of the Charter to be decided at a later stage. In October of that same year, meeting in the Finnish town of Tampere, the EU Council decided to set up a Convention, composed of national and European parliamentarians, as well as representatives of governments, to draw up the Charter of Rights.

The Convention will be meeting at regular intervals throughout the Year 2000 and will consult with a wide spectrum of civil society organisations before drawing up and agreeing the Charter by October 2000. It is then to be endorsed by the European Parliament and Commission in time for the December 2000 EU Summit taking place in Nice, France.

In recent years, significant advances have been made to recognise the importance of fundamental rights within the Union. The Amsterdam Treaty, states «the Union is founded on principles of liberty, democracy, respect for human rights and fundamental freedoms, and the rule of law, principles which are common to the Member States». It also stipulates that «the Union shall respect fundamental rights, as guaranteed by the European Convention for the Protection of Human Rights and Fundamental Freedoms signed in Rome on 4 November 1950 and as they result from the constitutional traditions common to the Member States, as principles of Community law». In addition, Article 46 of the Treaty of the European Union (TEU), which deals with the jurisdiction of the European Community Court of Justice, gives competence to rule on the actions of the Institutions of the European Union in relation to the European Convention for the Protection of Human Rights and Fundamental Freedoms (Council of Europe, 1950).

The Amsterdam Treaty makes it a binding obligation for the Union to respect the European Convention of Human Rights, and also for the Member States to respect the principle of “liberty, democracy, respect for human rights and fundamental freedoms and the rule of law”, on which the Union is founded.

The Amsterdam Treaty prescribes a political rather than a judicial means of enforcement in the event of a Member State being in serious breach of the founding principles of the Union. Article 7 of the TEU gives the Council the possibility to suspend certain rights of a Member State, for example, suspension of the right to vote in Council. The European Court of Justice has competence to judge on matters relating to the respect of human rights only in relation to the activities of the Union or its Institutions.

---

1 Art 6.1 TEU
2 Art 6.2 TEU
3 Art 6.2 TEU
4 Art 6.1 TEU
5 Art 6.1 TEU
The Maastricht and Amsterdam Treaties made progress in the protection of fundamental rights within the European Union. Amongst the most significant provisions were:

- Article 13 of the European Community Treaty (TEC) relating to non-discrimination against individuals or groups on grounds of gender, race or ethnic origin, religion or beliefs, disability, age or sexual orientation.
- The recognition of European Citizenship and the provision of rights – such as freedom of movement, the right to vote in local and European elections and the right to petition. (Articles 17-22 of the TEC).
- Article 137 of the TEC, which gives the Union competence to put in place programmes to fight poverty and promote social inclusion.

In spite of this progress, the process of European integration, with its clear implications for human rights, requires that real and effective protection of fundamental rights are afforded to the citizens and workers of Europe and that these rights should be set out explicitly in one coherent text.

Fundamental rights are an indispensable part both in strengthening the Social dimension of the European Union and in safeguarding and developing the European social model. The incorporation of the Charter in the Treaties is of paramount importance in view of the forthcoming enlargement of the Union.

The European Union is asserting itself as one of the key players in the global scene. Council, Parliament and Commission make frequent calls on the need to advance human rights as agreed through Declarations, Covenants and Conventions drawn up by the United Nations and its institutions. The EU Council has stated that Europe must become a clarion voice for human rights. This respect of fundamental rights must become an integral and coherent part of the commitments and demands of the European Union and its Member States in their trade and foreign relations.

Human rights are indivisible. The full set of rights: civil, political, economic, social, cultural and trade union, should be incorporated in the Treaty in a binding manner. An EU Charter of fundamental rights which limits itself to being a solemn political declaration, would fall short of what is needed now in terms of the objectives of a European construction, the enlargement of the Union and our global role. More importantly, it would not reinstate our fellow Europeans’ faith that alongside the economic and monetary union, we intend to give equal importance to the social dimension of European integration that should focus on the individual.

Respect of fundamental rights is essential for the realisation of a Citizens’ Europe.
A CHARTER OF FUNDAMENTAL RIGHTS FOR EUROPE

1. GENERAL PRINCIPLES

The incorporation of rights into the Treaty must remain consistent with and subject to the fundamental rights as defined in:

- the Universal Declaration of Human Rights (UN 1948) and relevant Covenants (ICCPR & ICESCR, 1966);
- the European Convention on Human Rights (Council of Europe, 1950)
- the Revised European Social Charter (Council of Europe, 1996)
- the Community Charter of Workers' Fundamental Social Rights (European Union, 1989)
- the ILO Conventions referred to in the ILO Declaration on Fundamental Principles and Rights at Work (1998)
- the Convention on the Elimination of all Forms of Discrimination against Women (UN, 1979)
- the Convention on the Rights of the Child (UN, 1989)
- the Convention on the Status of Refugees (UN, 1951) and its Protocol (UN, 1967)

The general principles common to all Member States reflect the obligations undertaken by them in these instruments and formally commit them to a series of obligations. The Member States and the Union should therefore assume joint responsibility for the enforcement of the rights appearing in these Instruments.

The rights to be included in the Treaty shall be guaranteed throughout the territory of the European Union. They should be regarded as a minimum level of protection and consequently are a minimum guarantee. They must not be used to undermine rights which already exist at European Union or Member State level and which may derive from either legislation or collective agreements. The Charter must not set rights which constitute a retreat from those already agreed through the UN and its Institutions or through the Council of Europe. They shall not lie below international standards.

The rights to be included in the Treaty shall, in principle, be available to all citizens of a Member State as well as third country nationals lawfully residing in a Member State of the Union. The rights which are to be afforded to other individuals who are on the territory of the Union are dealt with in a separate section of this document.

In order to emphasise the indivisibility of human rights, and in a spirit of pan-European political cohesion, the European Union shall also make the commitment to accede to the European Convention on Human Rights (including its Protocols), and to the Revised European Social Charter.
**Legal implications: enforcement and jurisdiction**

All rights to be included in the EU and EC Treaties should be subject to enforcement either on an individual or collective basis according to the following principles:

a) The legal system within each Member State will be competent with respect to the enforcement of fundamental rights which are not protected by any specific EU provision. This however does not exclude the use of the political sanction mechanism in relation to serious breaches of human rights.

b) The European Court of Justice will have competence, in accordance with existing procedures, with respect to the enforcement of EU provisions on a Union level and with respect to the implementation of both Union and Community law on a national level.

c) The European Court of Justice will have competence in relation to cross-border rights such as the freedom of movement and trans-national trade union rights.

In its case law, the European Court of Justice shall take into consideration all applicable practice and case law, established by other competent international bodies of the UN, ILO and the Council of Europe, so as to avoid the European Court of Justice deciding rulings, the effect of which would be to reduce the level of protection offered.

Any recourse for the interpretation and/or enforcement of these rights brought before the competent bodies established by international human rights instruments, other than the EU ones, cannot be re-addressed in the first instance or in appeal before the European Court of Justice.

The EU may adopt measures designed to promote the implementation by Member States of the binding political objectives or programmatic rights, listed in this document.

The Council, after due consultation with the other European Institutions, social partners and European NGOs, must adopt a **five-year plan** on the implementation of programmatic rights. Such a plan shall fix the calendar of deadlines and the procedures and mechanisms of enforcement. The draft plan should be submitted to the Council by the Commission within the year following the ratification of the Treaty. The Commission will submit regular progress reports and a follow-up plan will be prepared to be adopted at the end of the first five years.
2. **EXPLICIT FUNDAMENTAL RIGHTS**

2.1 **Civil and political rights**

The civil and political rights enshrined in the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights (UN) and the European Convention on Human Rights (Council of Europe) must be guaranteed throughout the European Union.

The following civil and political rights shall be available to all citizens of the European Union and to third country nationals who are legally resident in one of the Member States of the Union:

- No one shall be sentenced to death.
- No one shall be submitted to torture or to inhuman or degrading treatment.
- Freedom of thought, opinion and religion, freedom of expression and communication of information and ideas as well as the right to property.
- Freedom of association, of representation and of action at the local, national and European level.
- The right to life and to the protection of privacy.
- Everyone is equal before the law and must enjoy effectively and without any discrimination, all rights listed in the Treaty.
- Everyone shall have the right to equal treatment and opportunities without discrimination on grounds of sex, social, racial or ethnic origin, religion or belief, disability, age, or sexual orientation.

**Rights linked to citizenship**

The Treaties define a citizen of the Union as every person who holds the nationality of a Member State and that citizenship of the Union shall complement and not replace national citizenship (Art. 17, TEC).

The following rights must be guaranteed:

- Every citizen shall have the right to move, to reside freely and to work throughout the territory of the Union. These rights also apply to third country nationals lawfully residing in one of the member States of the Union.
- European citizenship also includes effective direct and indirect participation through the representative European Institutions (European Parliament, Economic and Social Committee, Committee of the Regions). After a specified period of legal residence, third country nationals must gain the right to vote in local and European elections.
- The right of citizenship requires a transparency of decision-making procedures and freedom of information.
- Everyone has the right of access to and correction of the administrative documents and other data, which are related to them. (Exceptions to this rule must be defined by law)
- The right to petition the European Parliament.
- The individual and collective right to challenge, with the possibility of recourse to the courts, the actions and shortcomings of the European Institutions.
The Treaty recognises the importance of the social dialogue with employers’ and workers’ organisations both within and across sectors of activity and this dialogue can also be extended to cross-border agreements. The right to European Collective Agreements must now be established.

The right to consultation of European NGOs must be recognised and result in the establishment of a structured civil dialogue.

**Rights of third country nationals legally residing in the European Union**

Third country nationals legally residing in the EU must have equality of treatment with EU citizens as regards civil, political, economic, social and cultural rights, including freedom of movement.

The Union and the Member States shall take co-ordinated measures to combat all forms of discrimination and ensure the promotion of equality of treatment.

**Rights of third country nationals who are within the territory of the Union without being legally resident**

The Union shall oversee the respect of the right to asylum as specified by the 1951 Geneva Convention and its 1967 Protocol. The Member States must take co-ordinated measures to give full effect to this right.

**Every person on the territory of the Union shall be guaranteed the following rights without discrimination based on gender, race, social or ethnic origin, religion or belief, disability, age or sexual orientation:**

- The right to life and to the protection of privacy. No one shall be sentenced to death. No one shall be submitted to torture or to inhuman or degrading treatment.
- The right to medical, legal and social assistance (food and shelter).
- The right of access for school-age children to education on the basis of equality of treatment with nationals of the State in which they reside.
- The right to equality before the law, to transparency and to understand decisions that concern them, and access to a system of appeal.
- The right to form associations and to take part in actions which concern them.

**2.2. Social and economic rights**

The following social and economic rights must be guaranteed:

- Everyone shall have the right to equal treatment and opportunity in all fields of life and work; regardless of gender, race, social or ethnic origin, religion or belief, disability, age or sexual orientation.
- Everyone is entitled to social, legal and economic protection.
- The right of all individuals, regardless of status, to a decent minimum income, enabling them and their family to live in dignity, to ensure their health and well-being.
- The right to social protection in case of unemployment.
- The right to social and medical assistance.
- Everyone has the right to privacy, and the protection of personal data.
• All children shall have the rights laid down in the Convention on the Rights of the Child.
• All children have the right to protection of their integrity and personal development, as well as to safety, education and health. The Union and the Member States shall take all necessary and effective measures to ban any form of child labour, which could endanger their health, safety or morality and to respect the guarantee the two ILO Conventions relating to child labour (ILO 138 and ILO 182).

Rights pertaining to work:

• Workers shall have the national and trans-national right of freedom of association, collective bargaining and trade union action, including the right to cross-border solidarity action and to strike;
• Everyone shall have the right to earn a living through their work, to choose their occupation freely, to just and satisfactory working conditions, and to protection against unemployment;
• Everyone has the right to equal pay for equal work without discrimination;
• Workers shall have the right to efficient occupational health and safety protection at work;
• Workers shall have the right to information, consultation and participation at work at all levels and at national as well as cross-border levels.

Policies, programmes and measures need to be implemented in order to ensure access to all of these direct social rights.
3. BINDING POLITICAL OBJECTIVES (PROGRAMMATIC RIGHTS)

Programmatic rights are those rights which depend on the implementation of political programmes. Such rights require appropriate policies, programmes and measures to ensure their promotion, access, enforcement and effectiveness.

The following programmatic rights shall be guaranteed:

- The right to work and to full employment must be ensured by joint actions of the European Union and of its Member States;
- The right to protection against arbitrary dismissal;
- The right to education and to life-long learning;
- The right to choose one’s educational system is assured throughout the territory of the Union;
- The right to equivalence of diplomas;
- The right to effective social protection, and appropriate health care;
- The right to decent housing;
- The right of people with disabilities to programmes and measures to promote their occupational and social integration;
- The right of elderly persons to live a decent life; the entitlement to a decent income, care allowance, and social protection;
- The right of every worker at the time of retirement to resources necessary for a decent standard of living;
- The right to a minimum pension to be set and regularly reviewed;
- The right for people and families to protection against poverty and social exclusion;
- The right for everyone, as a member of society, to economic, social and cultural rights essential to dignity and the freedom to develop their personality;
- Consumers’ rights (fairness in credit, financial services, general interest services, healthy and environmentally-sound products); the right to public health;
- Citizens’ rights to be informed and consulted at the relevant level of authority (European, national and local) for instance on matters concerning public health, area planning and management, the environment and quality of life;
- Right of access to services of general interest without discrimination.

The Council, after due consultation with the other European Institutions, social partners and European NGOs, must adopt a five-year plan on the implementation of programmatic social rights. Such a plan shall fix the calendar of deadlines and the procedures and mechanisms of enforcement. The draft plan should be submitted to the Council by the Commission within the year following the ratification of the Treaty. The Commission will submit regular progress reports and a follow up plan will be prepared to be adopted at the end of the first five years.
4. RIGHTS IN THE UNION’S EXTERNAL POLICIES

The Treaties stipulate that one of the objectives of the Union’s and Community’s external policies is “the development and strengthening of democracy and the rule of law, as well as the respect of human rights and fundamental freedoms.”6 The external policies of the Union, following the example of those of the Community defined in Articles 177 and 178 (TEC), must therefore promote fundamental rights, as enshrined in the instruments of the United Nations and other competent organisations.

To this end, the agreements between the Union and third countries shall include a clause requiring the respect of fundamental rights as described in particular in the Universal Declaration on Human Rights and the ILO Declaration on Fundamental Social Rights. This clause shall also be binding in international relations and in negotiations within the multilateral institutions involving the European Union or the European Community.

The Union shall draw on the social guarantees enshrined in the Generalised Preference System in order to promote the abolition in third countries of forced labour and of the worst forms of child labour. Within this framework, the Union shall also promote the Core ILO Conventions governing the right of association, to collective bargaining, child labour, slave and bonded labour, freedom from discrimination and equal pay.

The Union shall ensure that Member States and applicant countries ratify and enforce the Instruments of the Council of Europe pertaining to fundamental rights (European Convention of Human Rights and Revised European Social Charter) as well as the international standards specified in the General Principles of the present document. The Union shall support the emergence and the reinforcement of civil society in these applicant countries.

***

6 Art 11 TEU & Arts 177 and 178 TEC