REPORT

on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework
(2017/2089(INI))

Committee on Constitutional Affairs

Rapporteur: Barbara Spinelli
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EXPLANATORY STATEMENT - SUMMARY OF FACTS AND FINDINGS

Introduction

The adoption of the Charter of Fundamental Rights of the European Union (‘the Charter’) has represented a crossroad in the European integration’s process. The EU took on a formal responsibility before its citizens: turning from an economic community into a Union based on rule of law and human rights. The Lisbon Treaty, by virtue of article 6(1) TEU, has constitutionalised such choice, by conferring the Charter same legal value as the Treaties.

Pursuant to article 51(1) of the Charter, the conduct of the EU institutions vis-à-vis the Charter constitutes the main reference point for analysing its scope and assessing the degree of implementation of its provisions. The report aims to evaluate, from an EU institutional perspective, the current state of play concerning the role of the Charter as a source of EU primary law, while suggesting further rooms for improvements.

Fact-finding activities

The following fact-finding activities were carried out:

– a study\(^1\) of the Policy Department C of DG IPOL, presented in AFCO on 28.11.2017, in the presence of the Chair of the Council’s Working Party on Fundamental Rights, Citizens’ Rights and Free Movement of Persons (FREMP) and a representative of the European Commission, Unit Fundamental Rights Policy;

– technical meetings with: the European Union Agency for Fundamental Rights (FRA) (10.01.2018), the European Commission, Unit Fundamental Rights Policy (22.02.2018), the Head of the Department of the European Social Charter, Council of Europe (13.03.2018), the European Ombudsman (30.05.2018);

– a legal opinion\(^2\) of the FRA, presented in AFCO on 01.10.2018, based on the input collected from, *inter alia*, replies by the EU agencies to a questionnaire sent by the Chairperson of AFCO to all agencies.

The Charter in the EU legislative and decision-making processes

Notwithstanding relevant progresses made by the EU institutions to integrate the Charter into the legislative and decision-making processes, it still appears to be an under-evaluated instrument, not exploited to its full potential. The general tendency is that of focusing on avoiding its violation rather than on maximising its potential\(^3\), despite the fact that the duty of

\(^1\) *The Implementation of the Charter of Fundamental Rights in the EU Institutional Framework*, Prof. Olivier De Schutter, (PE 571.397).
promoting its application is clearly spelled out in the Charter itself (article 51(1)).

Compatibility checks and impact assessments - the main tools at the Commission’s disposal to evaluate, *ex ante*, the compliance of its proposals with fundamental rights, hence with the Charter - follow that path, highlighting a passive attitude toward the Charter rather than a proactive one. Specifically with regard to impact assessment, even if the role of human rights has been gradually enhanced, the primary focus lies on the traditional standards, namely economic, social and environmental factors. Meanwhile, Commission’s proposals may significantly change in the course of the legislative process, with the danger of making impact assessment meaningless especially during the so-called trilogues: the opacity of these joint negotiations makes it extremely difficult to evaluate the conduct of the decision-making process and, at the same time, political and/or party considerations might prevail over other concerns. The IIA on Better-Law Making enables the co-legislators to carry out further impact assessments, but on optional basis. At the co-legislators level, the Parliament has well-established means to assess the respect for fundamental rights, among which a specific procedure provided for in its Rules of Procedure (Rule 38) which, nevertheless, has never been used. However, as in the case of the Commission, these are mainly internal procedures carried out by its own services. As far as the Council is concerned, despite the adoption of internal guidelines to check the conformity of the legislation with fundamental rights, it does not exist any formal impact assessment mechanism. Additionally, the lack of transparency of its legislative process, as recently reported by the European Ombudsman¹, makes it hard to ascertain its decision-making.

In their field of action, EU institutions shall give full operability to the Charter’s provisions by upholding both their negative (duties of abstention) and the positive (duties of action) obligations, in line with the requirements of the international human rights law. This responsibility is clearly reaffirmed in the TEU by virtue of articles 2 and 6 and in analogous obligations enshrined in the provisions having general applications of Title II, Part I, TFEU. In order to attain such objective, while also complementing the institutions’ internal procedures, further measures could be envisaged: promoting a more structured and regulated cooperation with external independent bodies, such as the FRA, in assessing the human rights dimension of the legislative proposals; conducting separate and distinct fundamental rights impact assessments; establishing a mechanism to identify the need to take action at Union level to uphold and fulfil the provisions of the Charter and to make Union law compliant to the evolutionary nature of the international human rights law. It would also be appropriate to set up additional tools for conducting systematic *ex post* reviews of the consistency of the EU legislation with the Charter, currently left to the almost exclusive competence of the Court of Justice (CJEU). A human rights/Charter-based reporting and review clause included in the legislative texts could represent a starting point in this regard.

**The Charter in the EU Policies**

The Report will look at the role of the Charter particularly in two areas of EU policy-making.

First the external action, including the conclusion of trade agreements with third countries. In

¹ European Ombudsman, Decision in strategic inquiry OI/2/2017/TE on the transparency of the Council legislative process, 15.05.2018.
the specific field of Common Foreign and Security Policy (CFSP) the report will dwell on the restricted conditions under which the CJEU may exercise jurisdiction, hence on the lack of legal remedies against human rights’ violations resulting from decisions adopted in this area. At the same time, the internal behaviour of the EU institutions vis-à-vis the Charter will represents the litmus test for evaluating its conduct in the external dimension. The ability of the EU to effectively develop a CFSP entirely compliant with the principles enshrined in article 21(1) TEU will depend on its acting in full compliance with these requirements internally.

Comprehensive trade agreements are particularly relevant for the potential far-reaching impact they might have on human rights. Despite the adoption of significant practices and guidelines to deal with the human rights’ dimension of trade agreements, the report will suggest to go beyond the so-called ‘integrated approach’ currently followed by the Commission in its sustainability impact assessments, by fully endorsing the recommendations of the European Ombudsman to carry out specific human rights impact assessments prior to the conclusions of any trade negotiation.

Second, the economic governance: a field in which the powers of the EU are very extensive and can highly affect human rights, but where the Charter is blatantly neglected. EU primary and secondary law do not assign, in this area, any explicit function to the Charter and they barely mention its provisions. Several instruments shaping the EU economic and monetary policy have been adopted outside the Union framework, subtracting the EU institutions from political responsibility while assigning them, however, strong roles of surveillance and implementation. Decisions and choices made without a proper assessment of the human rights’ dimension, and by giving full priority to macroeconomic factors and conditionality, have already had deep repercussions on civil, economic and social rights, as also highlighted by the European Committee on Social Rights. In the view of the Rapporteur, the Ledra Advertising judgment of the CJEU should become the watershed for mainstreaming the Charter into the EU economic governance framework as well as into its intergovernmental dimension, becoming the benchmark for assessing the legitimacy of the measures proposed and adopted in this field.

Finally, a specific mention to the Eurogroup. Even if the CJEU has confirmed its informal nature and the non-binding character of its decisions, hence the immunity from article 263 TFEU, the political impact of its determinations and conclusions has deeply influenced the policy-making, circumventing the formalities of the EU law and ‘de-institutionalising’ the decision-making. In view of this enhanced de facto role, a clarification of its relevance vis-à-vis the Charter would be opportune.

Rights vs. Principles

The Charter is unique in combining, within a single document, civil and political, as well as social and economic rights, including ‘third generation human rights’. Nevertheless, the unclear dichotomy between rights and principles, enshrined in articles 51(1) and 52 of the Charter, and reinforced by the explanations of the Charter, as well as the dissimilar level of protection afforded to them (rights be respected/principles to be observed), risk undermining this hallmark.

1 European Ombudsman in case 1409/2014/MHZ on the European Commission’s failure to carry out a prior human rights impact assessment of the EU-Vietnam free trade agreement, 26.02.2016.
Moving towards a univocal ‘conceptualisation’ of all the articles enshrined in the Charter within the EU decision-making and policy-making processes, while having due regard to the primary role of the CJEU in interpreting the EU law, would contribute to confirm its unicity and strengthen its scope. Promoting a systematic synergy between the Charter and the other human rights law instruments, as well as between the competent supervisory bodies, would be mutually beneficial to reinforce the provisions and the obligations provided therein. The accession to the European Social Charter is an indispensable step forward the EU must take in this regard.

**The Charter and the EU Agencies**

EU agencies are bound to respect and promote the Charter as any other EU body. This duty is especially significant considering that they often act as operational link between the EU and national spheres, by supporting Member States and their relevant actors in fulfilling the responsibilities deriving from the EU law hence, potentially, in concretely implementing the provisions of the Charter. Looking at the current reality of the EU agencies, it emerges that the degree of internal awareness of the Charter as well as the establishment of internal procedures and/or tools to give effectiveness to its provisions, widely diverge accordingly to their mandate and nature. Several best practice are already in place that could be extended horizontally to all EU agencies. Additional tools – such as, for instance, the establishment of independent fundamental rights officers – would be beneficial for this purpose. Strengthening intra-agency cooperation and developing a structured dialogue with relevant human rights stakeholders are key elements of this process. The inclusion, by the EU legislator, of explicit references to the Charter in all the agencies’ founding regulations is urgently needed.

**Implementation of the Charter at national level**

The ‘national dimension’ of the Charter complements the EU one. Inadequate implementation of the Charter at national level undermines its overall consistency and effectiveness. According to article 51(1) of the Charter, its provisions are addressed to the Member States only when they are implementing Union law. Despite clarifications made by the CJEU, national practices show that it is still difficult to assess whether and how the Charter applies in concrete. Interestingly, sometimes national judges use the Charter as positive source of interpretation even in cases that do not fall within the scope of EU law. More in general, however, that ambiguity, combined with a widespread ‘awareness-gap’ regarding the Charter and the lack of national policies aimed at promoting its application, lead to its substantial under-utilisation at national level. EU institutions and agencies could play a major role in filling these gaps by putting in place a wide-range of measures and actions aimed at supporting Member States in this regard. Anyway, it is of paramount importance to better clarify the scope and move towards a more unconstrained interpretation of article 51 of the Charter, while evaluating the possibility to set it aside in the event of a revision of the Treaties.
MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION
on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework
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The European Parliament,

– having regard to the Charter of Fundamental Rights of the European Union,

– having regard to Articles 2, 3, 6, 7, 9, 10, 11, 21, 23 and 49 of the Treaty on European Union (TEU) and Articles 8, 9, 10, 11, 12, 15, 16, 18, 19, 20, 21, 22, 23, 24, 67(1), 258, 263, 267 and 352 of the Treaty on the Functioning of the European Union (TFEU),

– having regard to the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) and the case law of the European Court of Human Rights (ECtHR),

– having regard to the Memorandum of Understanding between the Council of Europe and the European Union,

– having regard to the Opinions and the Rule of Law Checklist of the Venice Commission,

– having regard to the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights,

– having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and to its resolution of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence¹,

– having regard to its resolution of 15 March 2007 on compliance with the Charter of Fundamental Rights in the Commission’s legislative proposals: methodology for systematic and rigorous monitoring²,

– having regard to its annual resolutions on the situation of fundamental rights in the EU,

– having regard to its resolution of 25 October 2016 with recommendations to the Commission on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights³,

– having regard to its resolution of 19 January 2017 on a European Pillar of Social

Rights¹,

– having regard to its resolution of 14 September 2017 on transparency, accountability and integrity in the EU institutions²,


– having regard to the Commission communication of 27 April 2005 entitled ‘Compliance with the Charter of Fundamental Rights in Commission legislative proposals – Methodology for systematic and rigorous monitoring’ (COM(2005)0172),


– having regard to the Commission communication of 19 October 2010 entitled ‘Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union’ (COM(2010)0573),


– having regard to the joint communication from the Commission and the High Representative of the Union for Foreign Affairs and Security Policy to the European Parliament and the Council of 12 December 2011 entitled ‘Human rights and democracy at the heart of EU external action – Towards a more effective approach’ (COM(2011)0886),

– having regard to the ‘EU Strategic Framework and Action Plan on Human Rights and Democracy’ of 25 June 2012,

– having regard to the Council Guidelines of 20 January 2015 on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies,

– having regard to the Guidelines for Council preparatory bodies entitled ‘Fundamental rights compatibility’,

– having regard to the Council Presidency seminar report of 13 May 2016 entitled ‘National policy application of the EU Charter of Fundamental Rights’,

² OJ C 337, 20.9.2018, p. 120.
– having regard to the Commission Guidelines of 19 May 2015 on the analysis of human rights impacts in impact assessments for trade-related policy initiatives,

– having regard to the Commission annual reports on the Application of the EU Charter of Fundamental Rights,

– having regard to the Commission Annual Colloquia on Fundamental Rights,

– having regard to the Judgment of the Court of Justice of the European Union (CJEU) of 20 September 2016, in Joined Cases C-8/15 P to C-10/15 P, Ledra Advertising Ltd v European Commission and European Central Bank (ECB)¹,

– having regard to the Judgment of the CJEU of 6 November 2018, in Joined Cases C-569/16 and C-570/16, Stadt Wuppertal v Maria Elisabeth Bauer and Volker Willmeroth v Martina Broßonn²,

– having regard to Opinion 2/13 of the CJEU of 18 December 2014 on the Accession of the European Union to the European Convention for the Protection of Human Rights and Fundamental Freedoms³,

– having regard to Opinion 4/2018 of the European Union Agency for Fundamental Rights (FRA) of 24 September 2018 entitled ‘Challenges and opportunities for the implementation of the Charter of Fundamental Rights’,

– having regard to the annual fundamental rights reports of the European Union Agency for Fundamental Rights,

– having regard to the Handbook of the FRA of October 2018 entitled ‘Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level – Guidance’,

– having regard to the Better Regulation Toolbox, in particular Tool #28 ‘Fundamental rights & human rights’,

– having regard to Rule 38 of its Rules of Procedure,

– having regard to the Opinion of the Secretary General of the Council of Europe of 2 December 2016 on the European Union initiative to establish a European Pillar of Social Rights,

– having regard to the Paper from the Dutch COSAC delegation on EU transparency of November 2017 entitled ‘Opening up closed doors: Making the EU more transparent for its citizens’, and to the letter of the COSAC Delegations to the EU Institutions of 20 December 2017 on the transparency of political decision-making within the EU,

– having regard to the studies entitled ‘The implementation of the Charter of Fundamental Rights in the EU institutional framework’, ‘The interpretation of Article 51 of the EU

¹ ECLI:EU:C:2016:701.
² ECLI:EU:C:2018:871.
³ ECLI:EU:C:2014:2454.

– having regard to Rule 52 of its Rules of Procedure, as well as Article 1(1)(e) of, and Annex 3 to, the decision of the Conference of Presidents of 12 December 2002 on the procedure for granting authorisation to draw up own-initiative reports,

– having regard to the report of the Committee on Constitutional Affairs and the opinions of the Committee on Employment and Social Affairs, the Committee on Civil Liberties, Justice and Home Affairs, the position in the form of amendments of the Committee on Women’s Rights and Gender Equality and the opinion of the Committee on Petitions (A8-0051/2019),

A. whereas the Lisbon Treaty has conferred the status of primary law on the Charter of Fundamental Rights of the European Union (hereinafter the Charter) within the EU legal framework, having the same legal value as the Treaties;

B. whereas this report does not assess each individual right contained in the Charter, but, rather, analyses implementation of the Charter as an instrument of primary law;

C. whereas social provisions are a crucial part of the Charter and the Union’s legal structure; whereas it is important to ensure respect for, and highlight the importance of, fundamental rights across the Union;

D. whereas, according to the CJEU, the fundamental rights recognised by the Charter are at the heart of the EU legal structure, and respect for them is a necessary precondition for the legality of any EU act;

E. whereas the Charter encompasses, in line with the requirements of international human rights law and of its Article 51, both negative (non-violation) and positive (active promotion) obligations which should be equally fulfilled in order to give full operational character to its provisions;

F. whereas Article 51 of the Charter circumscribes the scope of the Charter with regard to observing the principle of subsidiarity, taking account of the powers of the Member States and of the Union, and respecting the limits of the powers conferred on the Union in the Treaties;

G. whereas Article 51(2) of the Charter makes it clear that the Charter does not extend the scope 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;

H. whereas the institutions, bodies, offices and agencies of the Union are continuously bound by the Charter, even when they act outside the EU legal framework;

I. whereas, by virtue of Article 51, the provisions of the Charter apply to the Member States only when they implement Union law; whereas, however, the uncertain boundaries of such a requirement make it hard to determine whether and how the Charter applies concretely;

J. whereas the potential of the social and economic rights set out in the Charter has not been adequately exploited so far; whereas, recalling the opinion of the Secretary General of the Council of Europe, respect for social rights is not only an ethical imperative and a legal obligation, but also an economic necessity;

K. whereas Article 6 TEU also emphasises that fundamental rights, as guaranteed by the ECHR, must constitute general principles of the Union’s law;

L. whereas Article 151 TFEU refers to fundamental social rights such as those set out in the European Social Charter;

M. whereas its study of 22 November 2016 entitled ‘The Implementation of the Charter of Fundamental Rights in the EU institutional framework’\(^1\) considers, \textit{inter alia}, the relevance of the Charter for the Commission’s activities under the Treaty Establishing the European Stability Mechanism (ESM Treaty) and in the context of the European Semester; whereas little attention is being paid to the social rights set out in the Charter in the economic governance of the Union; whereas these rights must be considered genuine fundamental rights;

N. whereas the commitment in the European Pillar of Social Rights to delivering new and more effective rights for citizens in the areas of equal opportunities and access to the labour market, fair working conditions and social protection and inclusion further enhances the rights enshrined in the Charter;

O. whereas the principle of gender equality is a core value of the EU and is enshrined in the EU Treaties and the Charter; whereas Article 8 TFEU establishes the principle of gender mainstreaming by stating that ‘In all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women’;

P. whereas the transparency of the EU legislative and decision-making processes is a corollary of the right to good administration, as set out in Article 41 of the Charter, and an essential precondition for citizens to be able to assess and properly monitor the implementation of the Charter by the EU institutions;

Q. whereas the promotion, by the institutions, bodies, offices and agencies of the Union, of the broad spectrum of rights provided for in the Charter – ranging from civil and political to social, economic and third-generation rights – would constitute a crucial

impetus to develop a European public sphere and to give tangible expression to the concept of European citizenship and to the EU participatory dimension enshrined in the Treaties;

R. whereas the FRA has formulated a number of recommendations for the effective implementation of the Charter in its opinions entitled ‘Improving access to remedy in the area of business and human rights at the EU level’\(^1\) and ‘Challenges and opportunities for the implementation of the Charter of Fundamental Rights’\(^2\);

S. whereas Article 24 of the Charter sets out the rights of the child, obliging public authorities and private institutions to make children’s best interests a primary consideration;

T. whereas Article 14 of the Charter emphasises the right of every child to a fair education;

**Strengthening the integration of the Charter in the legislative and decision-making processes**

1. Strongly believes that the Commission’s Strategy for the effective implementation of the Charter of Fundamental Rights by the European Union (COM(2010)0575) constituted an initial effort after the entry into force of the Charter, but urgently needs to be updated; welcomes the annual reports on the application of the Charter by the Commission, and calls for a review of this strategy, which was elaborated in 2010, in order to update it to take account of the new challenges and institutional reality, particularly after Brexit;

2. Recognises the several important steps made by the EU institutions to integrate the Charter into the EU legislative and decision-making processes; notes that the principal role of the Charter is to ensure that the EU’s legislation is in full compliance with rights and principles enshrined in it, and acknowledges the difficulties involved in actively promoting them and ensuring their fulfilment;

3. Stresses that it is important that all proposals for Union legislation must respect the fundamental rights enshrined in the Charter;

4. Recalls that the procedures established by the EU institutions to assess the compatibility of legislative proposals with the Charter are mainly of an internal nature; calls for the opportunity to provide for enhanced forms of consultation, impact assessments, including specific gender impact assessments, and legal scrutiny with the involvement of independent experts in the field of fundamental rights; calls on the Commission to promote structured and regulated cooperation with human rights bodies, such as the FRA, the European Institute for Gender Equality (EIGE) and the relevant bodies of the Council of Europe and of the United Nations, and civil society organisations working in the field, whenever a legislative file potentially promotes or negatively affects fundamental rights;

\(^1\) FRA Opinion 1/2017, 10 April 2017.
5. Calls for the Commission, the Council and Parliament to revise Council Regulation 168/2007 in order to allow the FRA to deliver non-binding opinions on draft EU legislation on its own initiative, and to promote systematic consultations with the Agency;

6. Calls on the Commission, the other EU institutions and Member States’ national and regional governments to consult the FRA when fundamental rights are at stake;

7. Recognises the vital role of the FRA in assessing compliance with the Charter and welcomes the work that the Agency has undertaken; encourages the FRA to continue advising and supporting EU institutions and Member States on improving the culture of fundamental rights across the Union; welcomes the recently adopted FRA Strategy for 2018-2022;

8. Takes note of the CLARITY interactive online tool developed by the FRA in order to enable easy identification of the most appropriate non-judicial body with a human rights remit for a particular fundamental rights issue;

9. Calls on the Commission to ensure comprehensive impact assessments through a balanced evaluation of economic, social and environmental consequences and a revision of its decision to divide its considerations on fundamental rights into the current three categories – economic, social and environmental effects – and to create two specific categories entitled ‘Effects on fundamental rights’ and ‘Gender impact assessment’, so as to guarantee that all aspects of fundamental rights are assessed;

10. Calls on the Commission to take systematic action at Union level in order to uphold and fulfil the provisions of the Charter and to ensure that Union law is adapted to take account of the legal and jurisprudential developments of international human rights law; in this regard, reiterates furthermore its call on the Commission to submit a proposal giving effect to Parliament’s resolution of 25 October 2016 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights1, which would allow for the systematic screening of developments in the EU institutions and bodies and in the Member States that would call for action to protect and fulfil the rights, freedoms and principles of the Charter; suggests, in particular, that the conditions set out in the Copenhagen criteria relating to fundamental rights should not simply be used once as preconditions for accession, but that Member States be periodically assessed to gauge compliance with them;

11. Notes that the Ombudsman also plays a relevant role in guaranteeing respect for fundamental rights in the context of the Charter, not only in relation to Article 41 on the right to good administration as such, but also by taking into account the fact that such good administration is a cornerstone in terms of securing other fundamental rights; recalls the exemplary work of the Ombudsman in the field of transparency and freedom of information among others, as well as the Special Report on Frontex2 during this parliamentary term dealing in particular with the complaint rights of asylum seekers and

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migrants;

12. Understands that jurisprudence will have an impact on the scope of the Charter and that this must be taken into consideration;

13. Calls for the EU legislators to acknowledge the outcomes of the judgment of the General Court of 22 March 2018 (case T-540/15) on access to the documents of the trilogues\(^1\) and act accordingly; insists on the necessity of enhancing transparency and access to documents between EU institutions, in order to develop more effective interinstitutional cooperation, including accountability on matters related to fundamental rights; urges the Council to swiftly address the concerns raised with regard to the transparency of its decision-making process and access to documents in line with the relevant recommendations of the European Ombudsman;

**Mainstreaming the Charter into EU policies**

14. Recalls that EU policy-making relies upon the principles and objectives set out in Articles 2, 3, 4, 5 and 6 TEU, while fully endorsing and implementing the requirements enshrined in the provisions having general application of Title II, Part I, of the TFEU;

15. Reaffirms that all legal acts adopted by the Union must fully comply with all of the Charter’s provisions, including its social provisions; stresses the importance of incorporating explicit references to the Charter within the legal framework regulating EU economic and monetary policy; stresses that recourse to intergovernmental arrangements does not relieve the EU institutions of their obligations to assess the compatibility of such instruments with EU law, including the Charter;

16. Deems it crucial that the Union take resolute steps to strengthen its own engagements in guaranteeing the enjoyment of all of the rights of the Charter, including social rights;

17. Calls on the Commission to ensure that the European Semester process, including the country-specific recommendations and the annual growth survey recommendations, comply with the normative components of the social rights of the Charter;

18. Supports the introduction of strong and consistent fundamental rights clauses into the operational texts of the draft regulations establishing EU funds;

19. Calls on the Commission and the Council to make macroeconomic decisions having due regard to fundamental rights assessments, based on the full range of civil, political and social rights guaranteed by the European and international human rights law instruments;

20. Calls on the Commission to look into what steps are needed for accession by the European Union to the European Social Charter, and to propose a timeframe for achieving that objective;

21. Recalls that, on the basis of the powers laid down in the Treaties, it is primarily the responsibility of the Member States to put social policy into practice, hence also to

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impart effectiveness and tangible expression to the social provisions enshrined in the Charter; reiterates, however, its proposal, in the context of a possible revision of the Treaties, for a social protocol to be incorporated into them in order to strengthen fundamental social rights in relation to economic freedoms;

22. Takes note of the de facto crucial, but informal, role of the Eurogroup in the economic governance of the euro area, and of the impact that its decisions might have in influencing policy-making, without being counterbalanced by appropriate mechanisms of democratic accountability and judicial control; reminds its members of their horizontal obligations deriving from Articles 2 and 6 TEU and from the Charter;

23. Calls on the Commission and the European Central Bank to fully comply with the Charter in fulfilling their tasks under the European Stability Mechanism, including the lending practices of the latter, in view of the jurisprudence of the CJEU;

24. Recalls that the Union’s action on the international scene must be guided by the principles enshrined in Article 21(1) TEU; is convinced that full respect for and promotion of the Charter’s provisions inside the EU represents a benchmark for assessing the legitimacy and credibility of the Union’s behaviour in its international relations, including within the framework of the enlargement process pursuant to Article 49 TEU;

25. Notes the limited jurisdiction of the CJEU in the field of Common Foreign and Security Policy (CFSP), and warns against any potential limitation of the rights to an effective remedy as enshrined in the Charter;

26. Reminds the EU institutions of their human rights obligations within the scope of the Charter, also in the field of trade policy; encourages the Commission to carry out specific human rights impact assessments prior to the conclusion of any trade negotiation by making reference to the UN Guiding Principles on human rights impact assessments of trade and investment agreements;

27. Recalls that both the Treaties and the Charter make reference to the protection of national minorities and discrimination on grounds of language; calls for concrete administrative steps within the EU institutions to encourage national governments to find sustainable solutions and to promote the culture of linguistic diversity in their Member States, beyond the official EU languages;

28. Recalls the obligation laid down in article 6 TEU to accede to the ECHR; asks the Commission to take the necessary steps to eliminate the legal barriers that prevent the conclusion of the accession process, and to present a new draft agreement for the accession of the Union to the ECHR providing positive solutions to the objections raised by the CJEU in Opinion 2/13 of 18 December 2014; considers that its completion would introduce further safeguards protecting the fundamental rights of Union citizens and residents and provide an additional mechanism for enforcing human rights, namely the possibility of lodging a complaint with the ECtHR in relation to a violation of human rights derived from an act by an EU institution or a Member State implementing EU law, falling within the remit of the ECHR; is of the opinion, furthermore, that ECtHR case law will thus provide extra input for current and future EU action on the respect for, and promotion of, human rights and fundamental freedoms in the areas of
civil liberties, justice and home affairs, in addition to the case law of the CJEU in this field;

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29. Highlights the potential of certain EU agencies to offer support to Member States in fulfilling their obligations deriving from the Charter, by frequently acting as an operational link between the EU and national spheres; points out that this task can only be effectively performed by developing a fully-fledged fundamental rights practice within the agencies operating in the sphere of justice and home affairs and/or those whose activities could have an impact on the rights and principles derived from the Charter, taking into account both the internal and external dimensions of the protection and promotion of fundamental rights;

30. Calls on the relevant EU agencies to step up work to implement the gender equality principles enshrined in the Charter, including by ensuring that all the EU institutions and agencies pursue a policy of zero tolerance towards all forms of sexual violence and physical or psychological harassment; calls for all the EU institutions and agencies to fully implement its resolution of 26 October 2017 on combating sexual harassment and abuse in the EU;

31. Takes note of the differentiated range of policies and instruments developed by the various agencies to give effect to their fundamental human rights’ obligations, resulting in varying degrees of implementation; stresses the need to promote EU intra-agency cooperation as well as structured dialogues with independent human rights experts, and to build on existing best practices, in order to advance a common and strengthened human rights framework;

32. Calls on the EU agencies operating in the sphere of justice and home affairs and/or those whose activities could have an impact on the rights and principles deriving from the Charter to adopt internal fundamental rights strategies and to promote regular fundamental rights and Charter training sessions for their staff at all levels;

33. Regrets the absence, in many EU agencies’ founding regulations, of an explicit reference to the Charter; calls on the co-legislators to fill this gap, where necessary, whenever regulations or decisions setting up agencies are drafted or revised, and to provide, taking account of the mandate and the specificities of each individual agency, for additional operational mechanisms ensuring compliance with the Charter;

Supporting Member States in implementing the Charter at national level

34. Recalls that the EU and national dimensions of the Charter are inextricably linked and complement each other in ensuring that the Charter’s provisions are consistently applied within the overall EU legal framework;

35. Highlights the persistent awareness-gap concerning the Charter, its scope and degree of application among both rights-holders who benefit from its protection and legal and human rights experts, and deplores the scarcity of national action devoted to remedying

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such a deficiency;

36. Calls on the Commission to strengthen its awareness-raising activities concerning the Charter, with the full involvement of civil society organisations, and to promote and fund Charter-targeted training modules for national judges, legal practitioners as well as civil servants, aimed also at improving knowledge of Union policies and Union law, including *inter alia* substantive and procedural law, the use of EU judicial cooperation instruments, the relevant case law of the CJEU, legal language and comparative law; calls on the Commission, furthermore, to equip the Member States with practical guidelines supporting them in the implementation of the Charter at national level; asks the Commission, in this context, to give full visibility to the FRA’s recently published Handbook on Applying the Charter of Fundamental Rights of the European Union in law and policymaking at national level;

37. Encourages the Member States to regularly exchange information and experience on the use, application and oversight of the Charter, and to mainstream the examples of best practice already developed at national level; encourages the Member States to review their procedural rules on legal scrutiny and impact assessments of bills from the perspective of the Charter; notes that such procedures should explicitly refer to the Charter, in the same way as they do to national human rights instruments, to minimise the risk of the Charter being overlooked;

38. Points out that the loopholes in the transposition and proper implementation of EU law in Member States can have a genuine impact on the enjoyment of EU fundamental rights; recalls, in this context, the Commission’s role as guardian of the Treaties, rendering it ultimately – if not primarily – responsible for safeguarding fundamental rights, including through infringement procedures, where needed; calls in this regard for more determined leadership in ensuring adequate implementation of EU legislation;

*Toward a more consistent interpretation of the Charter*

39. Is convinced that different interpretations concerning the application of the provisions of the Charter by the EU institutions, bodies, offices and agencies of the Union and the Member States are detrimental to the added value brought by the Charter, namely that of representing a set of common minimum standards of protection to be applied horizontally to all institutional actors and policies and activities connected to the EU sphere;

40. Stresses that the incorporation of the Charter into primary EU law, while not extending the Union’s competences, and while respecting the principle of subsidiarity as defined in its Article 51, creates new responsibilities for the decision-making and implementing institutions, as well as for Member States when implementing EU legislation at national level, and that the Charter’s provisions have thus become directly enforceable by European and national courts;

41. Encourages the EU institutions and the Member States to allow for more straightforward application of the Charter as a whole;

42. Regrets that to date, the Republic of Poland and the United Kingdom have not decided to withdraw from Protocol No 30 of the Treaties, thereby ensuring their opt-out from
43. Instructs its President to forward this resolution to the Council, the Commission and the
governments and parliaments of the Member States.
5.12.2018

OPINION OF THE COMMITTEE ON EMPLOYMENT AND SOCIAL AFFAIRS

for the Committee on Constitutional Affairs

on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework
(2017/2089(INI))

Rapporteur for opinion: Eduard Kukan

SUGGESTIONS

The Committee on Employment and Social Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

A. whereas social provisions are a crucial part of the European Charter of Fundamental Rights and the Union’s legal structure; whereas it is important to ensure respect for and highlight the importance of fundamental rights across the Union;

B. whereas ever since the entry into force of the Lisbon Treaty, the Charter has been a source of primary law, applying in the first instance to the institutions and bodies in the Union;

C. whereas the Union, including EU institutions, bodies, offices and agencies and the Member States have the obligation to safeguard fundamental rights during the execution of their mandates and to fully comply with the Charter, including throughout the entire legislative process and when implementing Union legislation; whereas systematic application of the Charter in all policy fields is important;

D. whereas such an obligation means that EU institutions should not only seek to avoid violations of Charter rights, but also enhance the potential of the Charter by actively and systematically incorporating those rights when legislating or developing policies;

E. whereas the Council and Parliament must systematically ensure that any choices to be made between different policy options under consideration should be assessed on the basis of the contribution that such options make to the fulfilment of the Charter;
F. whereas the proclamation of the European Pillar of Social Rights further stresses the importance of equal opportunities and access to the labour market, fair and decent working conditions and social protection and inclusion, with a view to delivering new and more effective rights to citizens and enhancing the rights already enshrined in the Charter;

1. Reaffirms that all legal acts adopted by the Union must fully include and comply with the Charter’s provisions, including its social provisions and provisions in the area of economic governance; stresses that the compliance of Union legislation and policies with the Charter must be systematically assessed; calls on the Commission to ensure compliance of the European Semester process with the Charter, including the annual growth survey and the country specific recommendations;

2. Welcomes, in the context of the European Pillar of Social Rights, the Commission’s proposals on work-life balance, on predictable and transparent working conditions and on the coordination of the social security systems;

3. Understands that jurisprudence will impact on the scope of the Charter and that this must be taken into consideration;

4. Calls for the European Union to accede to the European Social Charter of the Council of Europe;

5. Stresses that all Union actors should devote equal consideration to social rights and economic rights and principles as to the other fundamental rights and principles enshrined in the Charter;

6. Calls on the Commission, the other EU institutions and Member States’ national and regional governments to consult the European Union Agency for Fundamental Rights (FRA) when fundamental rights are at stake;

7. Emphasises that the Union needs to further raise awareness of the Charter at both national and Union level, by enhancing communication on fundamental rights, values and freedoms, with a special focus on employment and social policies; underlines the importance of further promoting fundamental rights and freedoms; calls on the Union’s institutions and agencies, particularly those in the field of employment and social policies, to better align their practices with regard to the implementation of the Charter; calls for a particular focus on facilitating employment for persons with disabilities and on offsetting the disadvantages they experience in career progression; calls on the Commission to establish a Directorate-General responsible for matters concerning persons with disabilities; regrets the fact that the Charter’s potential has not yet been fully exploited;

8. Stresses the important role of the European Ombudsman in holding the Union’s institutions to account and promoting their good administrative practices; welcomes the work carried out by the European Ombudsman;

9. Welcomes the Commission’s work on fundamental rights and its annual reports on the application of the fundamental rights and freedoms enshrined in the Charter;
10. Welcomes the EU’s increased focus on the rights of elderly citizens and encourages further advances in a rights-based approach to ageing; stresses the importance of fighting ageism;

11. Stresses that the Union institutions and Member States should respect their obligations relating to the social and economic requirements of the Charter when seeking to ensure compliance with Union instruments, such as the Treaty on Stability, Coordination and Governance in the Economic and Monetary Union (TSCG) and the Stability and Growth Pact; demands, furthermore, that the notion of ‘exceptional circumstances’ pursuant to Article 3(3)(b) of the TSCG, which permits a deviation from the medium-term objective or planned adjustment path, should be interpreted in such a way as to include the country’s inability to comply without compromising its obligations under the social provisions of the Charter;

12. Recognises the vital role of the FRA in assessing compliance with the Charter and welcomes the work that the Agency has undertaken; encourages the FRA to continue advising and supporting EU institutions and Member States on improving the culture of fundamental rights across the Union; welcomes the recently adopted FRA Strategy for 2018-2022;

13. Reaffirms that the Charter’s social provisions guarantee adequate social and health coverage and protection for all workers, including platform workers;

14. Stresses that it is important that all proposals for Union legislation must respect the fundamental rights enshrined in the Charter; highlights, with special regard for fundamental workers’ rights, the need for the Union to ensure that every worker enjoys the same fundamental rights, regardless of company size, contract type, or employment relationship;

15. Calls on the Commission and the European Central Bank to fully comply with the Charter in fulfilling their tasks under the European Stability Mechanism, including the lending practices of the latter, in view of the jurisprudence of the Court of Justice.
### INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
+ : in favour
- : against
0 : abstention
OPINION OF THE COMMITTEE ON CIVIL LIBERTIES, JUSTICE AND HOME AFFAIRS

for the Committee on Constitutional Affairs

on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework
(2017/2089(INI))

Rapporteur for opinion: Dennis de Jong

SUGGESTIONS

The Committee on Civil Liberties, Justice and Home Affairs calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

– having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 44 and 51 thereof;

– having regard to the study entitled ‘The interpretation of Article 51 of the EU Charter of Fundamental Rights: the dilemma of stricter or broader application of the Charter to national measures’, published in February 2016 by Policy Department C of its Directorate-General for Internal Policies;

– having regard to its resolution of 25 October 2016 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights1, in particular paragraph 20 thereof;

– having regard to its resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union2, in particular paragraph 45 thereof;

A. whereas Article 6 of the Treaty on European Union (TEU) recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union...
Union of 7 December 2000, as adapted in Strasbourg on 12 December 2007, which has the same legal value as the Treaties;

B. whereas in accordance with Article 51 of the Charter, its provisions are addressed, inter alia, to the institutions, bodies, offices and agencies of the Union; whereas Article 51(1) states that the provisions of the Charter are addressed to the Member States ‘only when they are implementing Union law’;

C. whereas Article 51(1) also states that the institutions and bodies of the Union ‘shall [...] promote the application’ of the Charter; stresses that the Charter is not merely a set of prohibitions, but that it should also be considered a tool for taking measures to ensure that its provisions are fulfilled effectively;

D. whereas Article 6 TEU also emphasises that fundamental rights, as guaranteed by the European Convention on Human Rights (ECHR), must constitute general principles of the Union’s law;

E. whereas Article 151 of the Treaty on the Functioning of the European Union (TFEU) refers to fundamental social rights such as those set out in the European Social Charter;

F. whereas its study of November 2017 on the implementation of the Charter of Fundamental Rights in the EU institutional framework\(^1\) considers, inter alia, the relevance of the Charter for the Commission’s activities under the Treaty Establishing the European Stability Mechanism (ESM Treaty) and in the context of the European semester; whereas little attention is being paid to the social rights set out in the Charter in the economic governance of the Union; whereas these rights must be considered genuine fundamental rights;

G. whereas the EU Agency for Fundamental Rights (FRA) has formulated a number of recommendations for the effective implementation of the Charter of Fundamental Rights in its opinions entitled ‘Improving access to remedy in the area of business and human rights at the EU level’\(^2\) and ‘Challenges and opportunities for the implementation of the Charter of Fundamental Rights’\(^3\);

1. States that the Charter of Fundamental Rights has to be applied with full respect for the ECHR, while also recognising the importance of the European Social Charter and the European Pillar of Social Rights, and calls on the Commission to speed up the accession procedure of the EU to the ECHR and to give greater priority to the examination of the possibility of the EU’s accession to the European Social Charter;

2. Urges the Commission to clarify the scope of Article 51 of the Charter of Fundamental Rights, since different interpretations add to the confusion and make the application of the Charter unclear and unsatisfactory\(^4\);

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\(^2\) FRA Opinion 1/2017, 10 April 2017.


\(^4\) See, for example, section 2.3 of FRA Opinion 4/2018 of 24 September 2018.
3. Calls on the Commission to provide Member States with guidance as to how fundamental rights should be taken into account when they implement Union law;

4. Stresses that Article 51(1) of the Charter calls for the promotion of the rights and principles set out therein and points to the link between Union values and the Charter, as well as with the Copenhagen criteria for the accession of third countries to the Union; regrets that so far the EU does not have at its disposal a comprehensive mechanism for the protection of democracy, the rule of law and fundamental rights, as advocated by Parliament in its resolution of 14 November 2018, which would allow for the systematic screening of developments in the EU institutions and bodies and in the Member States that call for action to protect and fulfil the rights, freedoms and principles of the Charter; suggests, in particular, that the conditions set out in the Copenhagen criteria relating to fundamental rights not simply be used once as accession preconditions, but that Member States be periodically assessed against them;

5. Notes with concern that the Charter of Fundamental Rights only applies in Member States when implementing EU law and invites the different EU institutions to consider enhancing the scope of application of the Charter in the next revision of the Treaty;

6. Calls on the Commission, the other EU institutions and Member States’ national and regional governments to regularly consult the FRA when fundamental rights are at stake; calls, furthermore, for the introduction within the framework of the European Semester of a compulsory assessment and review of Member States’ adherence to the provisions of the Charter;

7. Expresses its concern about the lack of systematic fundamental rights impact assessments preceding the adoption by the Commission of its legislative proposals and calls for the Commission, the Council and Parliament to hold independent and comprehensive compatibility checks and impact assessments of fundamental rights for each legislative proposal, thus mainstreaming fundamental rights in all relevant policy areas;

8. Calls for the Commission, the Council and Parliament to provide for systematic forms of consultation of bodies and institutions with expertise on human rights in general and on the Charter of Fundamental Rights in particular; refers, in this respect, to the FRA and to the relevant bodies of the Council of Europe and of the United Nations;

9. Recalls that the Court of Justice ruled that the Commission must fully respect the Charter also in the tasks allocated to it under the ESM Treaty, in particular when it comes to signing memoranda of understanding, and that the same applies to the country-specific recommendations in the context of the European semester; calls on the Commission to systematically integrate fundamental rights impact assessments into EU socio-economic governance, paying particular attention to compatibility with the social provisions of the Charter;

10. Points out that loopholes in the transposition and proper implementation of EU law in

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2 Judgment of the Court (Grand Chamber) of 20 September 2016, Ledra Advertising Ltd and others v European Commission and European Central Bank (ECB), ECLI:EU:C:2016:701.
Member States can have a real impact on the enjoyment of EU fundamental rights; recalls, in this sense, the Commission’s role as guardian of the Treaties, and that it is thus ultimately – if not primarily – responsible for safeguarding fundamental rights, if necessary through infringement procedures; calls, in this regard, for more determined leadership in ensuring adequate implementation of EU legislation, notably concerning the right to environmental protection conferred in Article 37 of the Charter, by means of more diligent, determined and thorough infringement procedures; recalls the importance of prompt deployment and adequate implementation of the Access to Justice pillar of the Aarhus Convention;

11. Emphasises that the Charter’s application also extends to the EU agencies; states, therefore, that whenever regulations or decisions setting up agencies are drafted or revised, a reference should be included to the need for agencies to respect, within their respective mandates, the Charter and international human rights law; calls on all agencies to adopt a fundamental rights strategy, including a code of conduct for their staff and an independent mechanism to detect and report violations of fundamental rights; encourages, in particular, Frontex and the European Asylum Support Office (EASO) to fully comply with the Charter, not only through their general policies, but also in the daily activities of the border and coast guards, as well as the asylum officers, assigned to these agencies;

12. Calls for the adoption of the horizontal EU Anti-Discrimination Directive¹ to be concluded without delay, in order to further guarantee fundamental rights within the Union by means of the adoption of concrete EU legislation, thereby avoiding the current interference of Article 51;

13. Recalls the importance of the principle of subsidiarity, while at the same time encouraging Member States to apply the Charter to its fullest potential in accordance with the ECHR, and encourages the exchange of best practices among Member States, the Union and its agencies; recalls and encourages the appreciation and positive interpretation and implementation of the Charter by national judges;

14. Underlines that the Charter is probably the main tool for defending, promoting and realising the Union’s values, through its implementation in specific policies and political activities; stresses that it is essential for the EU to uphold these values both in its external policy and internally, by enhancing the Charter’s coverage of its citizens and residents, and in hosting refugees and the reception of migrants;

15. Stresses that all EU institutions, agencies and bodies, including Frontex, and the Member States are fully bound by the provisions of the Charter of Fundamental Rights;

16. Recalls that both the Treaties and the Charter of Fundamental Rights make reference to the protection of national minorities and discrimination on grounds of language; calls for concrete administrative steps within the EU institutions to encourage national governments to find sustainable solutions and to promote the culture of linguistic diversity in their Member States, beyond the official EU languages;

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17. Encourages the creation and promotion of national human rights institutions, which contribute to ensuring that fundamental rights are observed when making and implementing policy and laws and provide support to individuals in specific cases;

18. States that there are still gaps in access to remedy for victims in third countries of business-related fundamental rights abuses and calls for accessible, cheap and bureaucratically straightforward mechanisms that allow victims to address such abuses when the company concerned is established within the EU to be built into the EU’s external agreements, in particular its trade and investment agreements;

19. Emphasises that EU citizens have been empowered through the European Citizens’ Initiative, introduced with the Treaty of Lisbon and implemented in 2012, which gives EU citizens the right to petition the Commission to propose new EU legislation; notes that there have been four successful initiatives thus far, three of which have led to the creation of new legislation;

20. Calls on the Commission to systematically carry out human rights impact assessments before concluding external agreements, in particular trade agreements;

21. Stresses the importance of the establishment of the rules necessary for the protection of the Union’s budget in the case of generalised deficiencies as regards the rule of law and fundamental rights in the Member States; supports the introduction of strong and consistent fundamental rights clauses into the operational texts of the draft regulations establishing EU funds;

22. Condemns Poland’s unprecedented and isolated decision to oppose the Council conclusions on the application of the Charter on Fundamental Rights during the Justice Ministers’ meeting of 11 October 2018 in Luxembourg;

23. Recalls the political agreement between the major EU institutions and the Member States on the EU’s accession to the ECHR; considers that the completion of the process would introduce further safeguards of the fundamental rights of Union citizens and residents; asks that the necessary steps be taken to eliminate the legal barriers that prevent the conclusion of the accession process.
**INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION**

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| **Substitutes present for the final vote** | Dennis de Jong, Anna Hedh, Lívia Járóka, Marek Jurek, Jean Lambert, Jeroen Lenaers, Andrejs Mamikins, Angelika Mlinar, Maite Pagazaurtundúa Ruiz, Christine Revault d’Allonnes Bonnefoy |
| **Substitutes under Rule 200(2) present for the final vote** | Norbert Erdös, Fernando Ruas, Adam Szejnfeld |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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Key to symbols:
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- : against
0 : abstention
28.11.2018

POSITION IN THE FORM OF AMENDMENTS
OF THE COMMITTEE ON WOMEN'S RIGHTS AND GENDER EQUALITY

for the Committee on Constitutional Affairs

on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework (2017/2089(INI))

On behalf of the Committee on Women’s Rights and Gender Equality: Angelika Mlinar (rapporteur)

Position

AMENDMENTS

The Committee on Women’s Rights and Gender Equality presents the following amendments to the Committee on Constitutional Affairs, as the committee responsible:

Amendment 1
Motion for a resolution
Citation 1 a (new)

Motion for a resolution

Amendment

– having regard to its resolution of 13 March 2018 on gender equality in EU trade agreements¹,


Amendment 2
Motion for a resolution
Citation 1 b (new)
Motion for a resolution

Amendment

– having regard to the Council of Europe Convention on preventing and combating violence against women and domestic violence (Istanbul Convention), and to its resolution of 12 September 2017 on the proposal for a Council decision on the conclusion, by the European Union, of the Council of Europe Convention on preventing and combating violence against women and domestic violence¹,

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Amendment 3
Motion for a resolution
Citation 1 c (new)

Motion for a resolution

Amendment

– having regard to its resolution of 26 October 2017 on combating sexual harassment and abuse in the EU¹,

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Amendment 4
Motion for a resolution
Citation 1 d (new)

Motion for a resolution

Amendment

Amendment 5
Motion for a resolution
Citation 1 e (new)

Motion for a resolution
– having regard to the guidelines to promote and protect the enjoyment of all human rights by lesbian, gay, bisexual, transgender and intersex (LGBTI) persons adopted by the Council of the European Union at its meeting of 24 June 2013,

Amendment 6
Motion for a resolution
Recital G a (new)

Motion for a resolution
Ga. whereas the principle of gender equality is a core value of the EU and is enshrined in the EU Treaties and in Article 23 of the Charter; whereas Article 8 TFEU establishes the principle of gender mainstreaming, stating that ‘in all its activities, the Union shall aim to eliminate inequalities, and to promote equality, between men and women’;

Amendment 7
Motion for a resolution
Recital G b (new)

Motion for a resolution
Gb. whereas the European Institute for Gender Equality (EIGE) is tasked with developing, analysing, evaluating and disseminating methodological tools in order to support the integration of gender equality into all EU policies and the resulting national policies and to support gender mainstreaming in all EU institutions and bodies;
Amendment 8  
Motion for a resolution  
Recital L a (new)  

Motion for a resolution  
La. whereas Article 24 of the Charter sets out the rights of the child, obliging public authorities and private institutions to make children's best interests a primary consideration;

Amendment 9  
Motion for a resolution  
Recital L b (new)  

Motion for a resolution  
Lb. whereas Article 14 of the Charter emphasises the right of every child to a fair education;

Amendment 10  
Motion for a resolution  
Paragraph 1 a (new)  

Motion for a resolution  
1a. Deplores the fact that gender-based violence is too easily tolerated and stresses the need to end impunity by ensuring that perpetrators are prosecuted; calls for the EU to reach an agreement on the ratification of the Istanbul Convention, and on the Commission to put forward a comprehensive EU strategy against all forms of gender-based violence, including the sexual harassment and sexual abuse of women and girls, so as to ensure coherence between internal and external EU action in this field;

Amendment 11  
Motion for a resolution  
Paragraph 1 b (new)
1b. Is deeply concerned about the vulnerability of migrants, refugees and asylum seekers, particularly women, children and LGBTI people, and calls for the urgent improvement of safe and legal pathways for migration, full respect for the principle of non-refoulement, and access to family reunification services, housing, education, employment, healthcare and psychological support after arriving in the EU;

Amendment 12
Motion for a resolution
Paragraph 2

2. Recalls that the procedures established by the EU institutions to assess the compatibility of legislative proposals with the Charter are mainly of an internal nature; stresses the need to provide for enhanced forms of consultation, impact assessments and legal scrutiny with the full involvement of independent fundamental rights experts; calls on the Commission to promote structured and regulated cooperation with independent external bodies, such as the FRA and civil society organisations working in the field, whenever a legislative file potentially promotes or negatively affects fundamental rights;

Amendment 13
Motion for a resolution
Paragraph 3 a (new)

3a. Stresses the need for close cooperation with EIGE in its role of
Amendment 14
Motion for a resolution
Paragraph 4

4. Reiterates its call on the Commission to revise its decision to divide its considerations on fundamental rights into the current three categories in its impact assessment – economic, social and environmental effects – and to create a specific category entitled ‘Effects on fundamental rights’, to ensure that all aspects of fundamental rights are considered;

Amendment 15
Motion for a resolution
Paragraph 7 a (new)

7a. Calls on the Commission and the Council to promote, in trade agreements, a commitment to adopting, maintaining and implementing gender equality laws, regulations and policies effectively, including the active measures necessary to promote gender equality and women’s empowerment at all levels, in accordance with Article 23 of the Charter;

Amendment 16
Motion for a resolution
Paragraph 8 a (new)

disseminating accurate methodological tools and with a view to the more effective implementation of gender mainstreaming in the legislative and decision-making processes of the European Union;
Motion for a resolution

8a. Regrets that gender mainstreaming is not implemented consistently in all EU activities, which prevents the effective implementation of measures to combat gender discrimination and promote gender equality;

Amendment 17
Motion for a resolution
Paragraph 8 b (new)

Motion for a resolution

8b. Stresses the need to bring about a cultural shift in the institutions by means of a systematic and structured organisational learning process in order to achieve gender equality both internally and, in particular, with regard to the results and outcomes of their work;

Amendment 18
Motion for a resolution
Paragraph 16 a (new)

Motion for a resolution

16a. Calls on the relevant EU agencies to step up work to implement the gender equality principles enshrined in the Charter, including by ensuring that all the EU institutions and agencies pursue a policy of zero tolerance towards all forms of sexual violence and physical or psychological harassment; calls for all the EU institutions and agencies to fully implement its resolution of 26 October 2017 on combating sexual harassment and abuse in the EU;
Amendment 19  
Motion for a resolution  
Paragraph 20 a (new)

Motion for a resolution

Amendment  
20a. Calls for the EU institutions and the Member States to combat all forms of discrimination and violence against LGBTI people in their respective countries and beyond, as outlined in the Charter;

Amendment 20  
Motion for a resolution  
Paragraph 20 b (new)

Motion for a resolution

Amendment  
20b. Stresses that the EU should put in place comprehensive and strategic measures to enable the Member States to respond to women’s rights violations within their own borders and ensure their active promotion of the Charter of Fundamental Rights; reiterates its call on all the Member States, in this context, to swiftly ratify the Istanbul Convention in all its parts;

Amendment 21  
Motion for a resolution  
Paragraph 20 c (new)

Motion for a resolution

Amendment  
20c. Emphasises that women’s rights and gender equality, including universal respect for and access to sexual and reproductive health and rights, must be placed at the centre of the Charter of Fundamental Rights and policymaking at national level;
Amendment 22
Motion for a resolution
Paragraph 24 a (new)

24a. Recognises that social exclusion can be caused by a lack of fair education and exacerbated by bullying; encourages national and local administrations and schools to provide for measures to assist victims of bullying and prevent their social exclusion, in accordance with Article 34 of the Charter;

Amendment 23
Motion for a resolution
Paragraph 25 a (new)

25a. Encourages the Member States to support the use of impact assessments for the most vulnerable groups (single mothers, children, people with disabilities, etc.) in the development of national legislation on education, while recognising that this is not required under any legislation or charter and represents a major gap and point of discrepancy between EU and national legislation, which hinders the development of gender equality as set out in the Charter;
21.1.2019

OPINION OF THE COMMITTEE ON PETITIONS

for the Committee on Constitutional Affairs

on the implementation of the Charter of Fundamental Rights of the European Union in the EU institutional framework
(2017/2089(INI))

Rapporteur: Josep-Maria Terricabras

SUGGESTIONS

The Committee on Petitions calls on the Committee on Constitutional Affairs, as the committee responsible, to incorporate the following suggestions into its motion for a resolution:

A. having regard to the Charter of Fundamental Rights of the European Union, in particular Articles 44 and 51 thereof;

B. having regard to the study entitled ‘The interpretation of Article 51 of the EU Charter of Fundamental Rights: the dilemma of stricter or broader application of the Charter to national measures’, published in February 2016 by Policy Department C of its Directorate-General for Internal Policies;

C. having regard to the hearing entitled ‘Broadening the scope of the EU Charter on Fundamental Rights (Article 51)?’, held by its Committee on Petitions on 23 February 2016;

D. having regard to its resolution of 25 October 2016 on the establishment of an EU mechanism on democracy, the rule of law and fundamental rights¹, in particular paragraph 20 thereof;

E. having regard to its resolution of 16 February 2017 on possible evolutions of and adjustments to the current institutional set-up of the European Union, in particular paragraph 45 thereof;

1. Reaffirms that the fundamental right to petition, enshrined in Article 44 of the Charter of Fundamental Rights and Articles 20 and 227 of the Treaty on the Functioning of the European Union (TFEU), is one of the pillars of European citizenship and a crucial element of participatory democracy, seeking to bring citizens closer to the EU through an open, democratic, inclusive and transparent procedure;

2. Recalls that an increasing number of petitions submitted to Parliament after the entry into force of the EU Charter of Fundamental Rights in December 2009 invoke the Charter as the legal basis for the alleged violation of fundamental rights; notes that these petitions might be evidence of a serious structural lack of a fundamental rights-based approach in the drafting of legislation and policymaking at both EU and national level and in the implementation of legislation in Member States; considers that EU citizens can benefit from enhanced interaction between the Committee on Petitions and the Fundamental Rights Agency (FRA) when it comes specifically to the handling of petitions, with the FRA directly addressing petitioners’ concerns about possible fundamental rights violations;

3. Notes that the European Ombudsman also plays an important role in guaranteeing respect for fundamental rights in the context of the Charter, not only with regard to Article 41 on the right to good administration itself, but also considering that such good administration is a cornerstone in securing other fundamental rights; recalls the exemplary work carried out by the Ombudsman this parliamentary term, in the field, inter alia, of transparency and freedom of information, as well as her Special Report on Frontex, in particular with regard to the right to complain of asylum-seekers and migrants;

4. Notes that the entry into force of the Charter is seen by the EU’s citizens and residents as one of the main ways in which Union membership brings added value; is convinced that a reform of the Union in order to increase its legitimacy and value in the eyes of citizens and residents can mainly be achieved by upgrading the scope of protection of the fundamental rights enshrined in the Charter; underlines the fact that the Charter of Fundamental Rights has the potential to remedy the democratic deficit and can be considered the cornerstone on which to develop robust social policies that bridge socioeconomic inequalities and grant a fully-fledged Union of peoples;

5. Is concerned by the fact that the Charter of Fundamental Rights only applies in Member States when implementing EU law; reiterates that many citizens and residents have found its implementation to be unclear and unsatisfactory; stresses, nonetheless, that the Charter is a primary source of EU law, not only for the institutions but also for the Member States; recalls that, in order to ensure the effective exercise of fundamental rights, Member States must also enforce the provisions of the Charter and that its restricted applicability does not give them ‘carte blanche’ to violate the rights set out therein;

6. Considers that the large number of sources of fundamental rights protection (national, EU and international) and the complexity of their interaction should not weaken protection itself; highlights that a more rigorous interpretation and application of the Charter of Fundamental Rights would suffice to ensure protection and promotion of fundamental rights throughout the Union; considers that this wider interpretation must be in line with the EU’s international human rights obligations, as they emanate from the Union’s duty to uphold customary international law and general principles of public international law;

7. Considers that the expectations of most petitioners in relation to the rights conferred on them by the Charter are high and go far beyond their current scope of application; stresses that an excessively narrow or incoherent interpretation of Article 51 alienates people from the EU; invites the EU institutions and Member States to reinforce the application of the Charter by broadening its scope of application and urges the Commission to take steps to ensure that the interpretation of the scope of Article 51 is as coherent and wide as possible, so as to safeguard the universal and uniform implementation of the Charter throughout the Union and for all citizens; considers that the universal application of the Charter is a condition for the promotion and consolidation of European citizenship and the strengthening of democratic participation in the EU;

8. Welcomes the Commission’s efforts to combat discrimination against women; recalls that Article 23 of the Charter provides that ‘equality between men and women must be ensured in all areas, including employment, work and pay’; points out that the principle of equality does not stop us from maintaining or taking measures that provide specific advantages for the underrepresented sex;

9. Deems it crucial that, besides general guarantees of freedoms and safeguards of equality and political rights, the Union take resolute steps to step up, in particular, its own engagement in guaranteeing the enjoyment of the social rights set out in the Charter; considers that in this way, current guarantees of civil and political rights will eventually be matched by enhanced economic, social and cultural rights, thus bringing the Union in line with the universality, inalienability, indivisibility, interdependence and interrelation of human rights; expresses the wish that the European Social Charter be offered the same standing as the Treaties, in the same manner as the Charter of Fundamental Rights;

10. Insists that Article 7(7) of Regulation (EU) No 472/2013 on the strengthening of economic and budgetary surveillance of Member States in the euro area experiencing or threatened with serious difficulties with respect to their financial stability¹, which specifies that the budgetary consolidation efforts required following the macroeconomic adjustment programme must ‘take into account the need to ensure sufficient means for fundamental policies, such as education and health care’, be interpreted in line with the requirements of the social provisions of the Charter and the principles of the European Social Charter;

11. Calls for the development and implementation of a code of conduct applicable to all staff in line with the Charter of Fundamental Rights; calls for the establishment of compliance mechanisms that ensure that any violation is detected, reported and processed in a timely manner; believes that the right of alleged victims and whistle-blowers to the protection of their personal data should be considered inalienable throughout this process; calls for the

organisation of staff training sessions with a view to eliminating discrimination and hate speech on the basis of gender, sexual orientation, ethnic origin or any other status;

12. Urges the Council to conclude the adoption of the horizontal EU Anti-Discrimination Directive, which would guarantee the principle of non-discrimination as enshrined in the Charter; deplores the fact that it has been blocked for so long, as its adoption would further guarantee concrete fundamental rights in the Union, circumvent the current interference of Article 51 by means of the adoption of specific EU legislation to be transposed by Member States, and conform with the obligations taken on by the Union on its accession to the UN Convention on the Rights of Persons with Disabilities;

13. Insists that it is of paramount importance to guarantee the effective protection granted to EU citizens and residents under the current system, particularly in the field of economic, social and cultural rights, but also with regard to civil liberties, discrimination and democratic participation, by broadening the application of the Charter; calls on the Commission, in this regard, to ensure the inclusion of an independent, participatory and transparent fundamental rights impact assessment in all new legislative proposals for the purposes of mainstreaming and effectively protecting fundamental rights in all relevant policy areas; suggests the further development and application of a ‘fundamental rights by design’ concept, in order to promote the embedding of the highest standards of fundamental rights in all policy-making from the earliest stages; stresses that the existence but non-application of an article such as Article 9 TFEU on high employment and social protection does not serve the democratic nature of the EU and its Member States but, on the contrary, adds to its de-legitimisation;

14. Highlights the importance of the FRA in an institutional setting; regrets the lack of integration of the agency’s work with the evaluation of the compatibility of institutional activities with fundamental rights and, on a regular basis, with expertise on legislative files of relevance to the internal and external competences of the Union; reiterates that it is essential to draw on independent and impartial expertise to systematically prepare compatibility checks on all sectors of activity of the EU institutions; considers, to that end, that the contributions of the relevant agencies (the European Institute for Gender Equality and the FRA) to the legislative institutions and those with operational competences in the field could be systematised and further upgraded so as to be made more substantial; takes note of the Clarity interactive online tool developed by the FRA in order to enable easy identification of the most appropriate non-judicial body with a human rights remit for a particular fundamental rights issue;

15. Strongly believes that, while a good first step after the entry into force of the Charter, the Commission’s strategy for the effective implementation of the Charter of Fundamental Rights by the European Union urgently needs to be updated; welcomes the Commission’s annual reports on the application of the Charter and calls for the strategy drawn up in 2010 to be reviewed to reflect the new challenges and realities facing the institutions, particularly in the wake of Brexit;

16. Stresses that all EU institutions, agencies and bodies, including Frontex, as well as the Member States are fully bound by the provisions of the Charter of Fundamental Rights;

17. Recalls that both the Treaties and the EU Charter of Fundamental Rights make reference to the protection of national minorities and discrimination on grounds of language; calls
for concrete administrative steps within the EU institutions to encourage national
governments to find sustainable solutions and to promote the culture of linguistic diversity
in their Member States, beyond the official EU languages;

18. Points out that Member States themselves can, and have the moral obligation to,
implement the provisions of the Charter in their legislation, even when they are not
directly transposing EU law; deplores the deteriorating situation of media freedom in
several Member States; urges Member States to respect, and the Commission to take, the
necessary measures to monitor and enforce media freedom and pluralism; encourages the
creation and promotion of national human rights institutions, which contribute to ensuring
that fundamental rights are observed when making and implementing policy and laws and
which provide assistance to individuals in specific cases; considers the arbitrary or
excessive use of violence by Member State police or other security forces against peaceful
assemblies to be contrary to the provisions of the Charter;

19. Calls on the Commission to adopt a more courageous approach when monitoring
measures taken by national authorities to implement EU law that raise issues concerning
the Charter of Fundamental Rights, especially given that these rights are not necessarily
guaranteed across the EU;

20. Welcomes the ratification of the Marrakech Treaty on access for visually impaired people
to adapted published works, as it is an essential step in the context of Article 26 of the
Charter on integration of persons with disabilities;

21. Takes note of Petition No 0657/2016 and stresses that ensuring that Article 10 of the
Charter on freedom of thought, conscience and religion is respected in all Member States,
and in all instances and institutions in the public sphere, particularly in the domain of
education, is a matter of the utmost importance;

22. Calls on the Commission, the other EU institutions and Member States’ authorities to
regularly and directly consult the FRA when fundamental rights are at stake; calls,
Furthermore, for the introduction within the framework of European economic governance
of a compulsory assessment and review of the existing framework legislation, in addition
to Member States’ policies, in order to guarantee adherence to the Charter, its social
provisions in particular; proposes the development of a Fundamental Rights Scoreboard in
order to monitor respect for fundamental rights in the Member States;

23. Considers that the implementation of the internal aspects of the Charter is lacking
considerably, particularly when Member States exercise Union competences; calls on the
Commission to be more vigilant in ensuring full and consistent implementation of the
Charter by the Member States; calls for the Commission to develop an integrated
approach to monitor compliance with Article 6 of the Treaty on European Union (TEU)
and Articles 258 to 260 TFEU that would allow for timely notification, reaction and
prevention in the case of violations of human rights and fundamental freedoms; recalls the
promise made by the previous Commission to create a new tool, in addition to the use of
Article 7 TEU as a last resort, that goes beyond the existing infringement procedures in
terms of sanctions, to address obvious violations of the fundamental rights set out in the
Charter, particularly when Member States’ governments are involved;

24. Strongly differs with the Commission on its restrictive interpretation of Article 51(1)
when assessing a number of petitions submitted to Parliament, and reiterates strongly that the EU institutions need to respect the Charter under all circumstances and in whichever role they play;

25. Stresses the need to ensure respect for the Charter, in particular its social provisions, and that it is complied with during and throughout all stages of the European Semester, including the Annual Growth Survey (AGS), with a simultaneous upgrade of the Joint Employment Report (JER); calls for the development of social benchmarks to be monitored and included in the country-specific recommendations (CSRs) as part of an integrated approach;

26. Highlights that the austerity policies adopted at EU level and by the Member States caused a huge increase in socioeconomic inequalities, preventing citizens from fully and concretely enjoying their fundamental rights;

27. Recalls the political agreement between the major EU institutions and the Member States on the EU’s accession to the European Convention on Human Rights; stresses that this accession is a legal obligation under Article 6(2) TEU; considers that its completion would introduce further safeguards of the fundamental rights of Union citizens and residents and provide a coherent framework for human rights protection throughout Europe; calls on the Commission to take the necessary steps to eventually eliminate the legal barriers that prevent the conclusion of the accession process, if necessary by drafting a new accession agreement that remedies the inadequacies pointed out by the Court of Justice of the European Union in Opinion 2/13;

28. Invites the different EU institutions to consider an enhancement of the scope of application of the Charter, including the deletion of Article 51, in the next revision of the Treaty;

29. Voices its discontent at the interpretation of Articles 51 and 52 as bringing in artificial contradictions between rights and principles, especially civil and political rights and social and economic principles; echoes the FRA’s position, as outlined in its Fundamental Rights Report 2017, that the Charter ‘is unique in combining, with equal status, civil and political and social and economic rights in a single document’; considers that social and economic rights are lacking considerably and should be reinforced decisively in EU law and in the constitutional orders of Member States by rendering the 20 principles of the European Social Charter legally binding for all institutions and all Member States.
## INFORMATION ON ADOPTION IN COMMITTEE ASKED FOR OPINION

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| **Members present for the final vote** | Margrete Auken, Andrea Cozzolino, Pál Csáky, Rosa Estarás Ferragut, Eleonora Evi, Peter Jahr, Jude Kirton-Darling, Svetoslav Hristov Malinov, Ana Miranda, Gabriele Preuß, Jaroslaw Wałęsa, Cecilia Wikström |
| **Substitutes present for the final vote** | Kostadinka Kuneva, Josep-Maria Terricabras |
| **Substitutes under Rule 200(2) present for the final vote** | José Blanco López, Gabriel Mato, Francisco José Millán Mon, Massimiliano Salini, Barbara Spinelli |
### FINAL VOTE BY ROLL CALL IN COMMITTEE ASKED FOR OPINION

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| **8** | **-** |
| EPP | Pál Csáky, Rosa Estarás Ferragut, Peter Jahr, Svetoslav Hristov Malinov, Gabriel Mato, Francisco José Millán Mon, Massimiliano Salini, Jaroslaw Wałęsa |

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**Key to symbols:**

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- **-** : against
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## INFORMATION ON ADOPTION IN COMMITTEE RESPONSIBLE

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| **Members present for the final vote** | Gerolf Annemans, Pascal Durand, Esteban González Pons, Danuta Maria Hübner, Jo Leinen, Maite Pagazaurtundúa Ruiz, Markus Pieper, Paulo Rangel, György Schöpflin, Pedro Silva Pereira, Barbara Spinelli, Kazimierz Michał Ujazdowski |
| **Substitutes present for the final vote** | Max Andersson, Sylvia-Yvonne Kaufmann, Jasenko Selimovic, Gabriele Zimmer |
| **Substitutes under Rule 200(2) present for the final vote** | José Blanco López, Michael Gahler, Stefan Gehrold, Theresa Griffin, Fernando Ruas |
# FINAL VOTE BY ROLL CALL IN COMMITTEE RESPONSIBLE

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