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REPORT

on compliance with the Charter of Fundamental Rights in the Commission's legislative proposals: methodology for systematic and rigorous monitoring (2005/2169(INI))

Committee on Civil Liberties, Justice and Home Affairs

Rapporteur: Johannes Voggenhuber

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MOTION FOR A EUROPEAN PARLIAMENT RESOLUTION

on compliance with the Charter of Fundamental Rights in the Commission's legislative proposals: methodology for systematic and rigorous monitoring (2005/2169INI)

The European Parliament,

- having regard to the Commission communication on compliance with the Charter of Fundamental Rights in the Commission's legislative proposals (COM(2005)0172),
- having regard to Articles 6 and 7 of the Treaty on European Union,
- having regard to the Charter of Fundamental Rights¹ of the European Union proclaimed in Nice on 7 December 2000,
- having regard to the constitutional treaty signed in Rome on 29 October 2004, which incorporates the provisions of the Charter of Fundamental Rights, thus making them legally binding,
- having regard to its resolution of 20 April 2004 on the Commission communication on Article 7 of the Treaty on European Union: Respect for and promotion of the values on which the European Union is based²,
- having regard to its resolution of 26 May 2005 on the promotion and protection of fundamental rights: the role of national and European institutions, including the Fundamental Rights Agency³,
- having regard to the 2005 Annual Report on the situation of fundamental rights in the European Union, drawn up by the EU network of independent experts,
- having regard to the proposal for a Council regulation establishing a European Union Agency for Fundamental Rights (COM(2005)0280 - 2005/0124(CNS)) and the proposal for a Council decision empowering the European Union Agency for Fundamental Rights to pursue its activities in areas referred to in Title VI in the Treaty on European Union (COM(2005)0280 - 2005/0125(CNS)),
- having regard to the speech by Mr José Manuel Barroso, in his capacity as President-designate of the European Commission, at the European Parliament's plenary sitting of 17 November 2004,
- having regard to Rules 45, 34 and 91 of its Rules of Procedure,
- having regard to the report of the Committee on Civil Liberties, Justice and Home Affairs and the opinion of the Committee on Constitutional Affairs (A6-0034/2007),

¹ OJ C 364, 18.12.2000, p. 1.

² OJ C 104E, 30.4.2004, p. 408.

³ OJ C 117E, 18.5.2006, p 242.

- A. whereas the Union is based on the principles of freedom, democracy, respect for human rights and for fundamental freedoms as well as on the rule of law, these principles being common to all Member States (Article 6 of the EU Treaty),
- B. whereas Parliament, as the directly elected representative of the citizens of the Union, has a particularly prominent responsibility in the realisation of these principles,
- C. whereas this responsibility is all the greater because, as the Treaties currently stand:
- the right of individuals to bring an action directly before the European courts remains very limited¹,
 - collective action is not possible,
 - in a number of fields, even the jurisdiction of the Court is limited (cf. Title IV of the EC Treaty and Article 35 of the Treaty on European Union) if not non-existent (second pillar - Title V of the Treaty on European Union²),
- D. whereas a procedure for checking the compatibility of all legislative proposals with the Charter of Fundamental Rights is one of the necessary consequences which have arisen from the adoption of the Charter by Parliament, the Council, the Commission and all the Member States, as well as from the formal proclamation to EU citizens on 7 December 2000 in Nice,
- E. whereas the effective scope of fundamental rights arising from the application of Article 6(2) of the Treaty on European Union is to this day primarily the product of case law, but whereas the European legislature should also explicitly state how these rights should be interpreted,
- F. whereas, by adopting the Charter of Fundamental Rights, Parliament, the Council and the Commission agreed on definitions of these rights and whereas, for obvious reasons of consistency and good faith, they should in future refer to them when drafting European Union legislation (cf. Commission communication COM(2005)0172) referred to above,
- G. whereas, once incorporated in the law of the Union, the rights defined in the Charter acquire binding force by virtue of the European law based thereon,
- H. whereas the systematic nature, thoroughness, objectivity, openness and transparency of the procedure for compliance with fundamental rights in legislative proposals are made all the more important by the fact that, regrettably, the Charter of Fundamental Rights has so far not been made legally binding; whereas over the years the Charter has nonetheless become a source of inspiration for the European courts such as the Court of First Instance, the Court of Justice³, the European Court of Human Rights in Strasbourg and numerous

¹ Judgment of the Court of 25 July 2002 in Case C-50/00, *Unión de Pequeños Agricultores v. Council of the European Union*, [2002] ECR I-6677.

² Order of the Court of First Instance of 7 June 2004 in Case T-338/02, *Segi et al. v. Council of the European Union*, [2004] ECR II-1647.

³ Case C-540/03 of 27 June 2006, *European Parliament v. Council of the European Union*, on the right to family reunification for minor children of third-country nationals (Directive 2003/86/EC).

constitutional courts,

- I. whereas, when assessing in advance the impact which new European legislation will have on fundamental rights, the European legislature should take account of the views of national legislatures, civil society and the academic world and the expertise of other international organisations such as the Council of Europe and the United Nations; whereas in this way the European legislature would promote the development of an ever more widespread tradition of fundamental rights, in the same way as was the case when drafting certain acts relating to the protection of private life, the right to family life and the right to transparency,
- J. whereas the Commission's proposal on the consolidation and better public awareness of the procedure, for compliance with fundamental rights in legislative proposals, which came into force in 2001, represents clear progress in its project to develop a genuine 'fundamental rights culture' in the European Union,
- K. whereas, however, this procedure is too introverted, the criteria are too restrictive and the role of the European Parliament is not sufficient, and whereas the proposals on the integration of Member State parliaments, such as that of the British House of Lords¹, remain unconsidered, as does the much-needed continuous dialogue between the European institutions and collaboration with independent organisations, with a view to increased objectivity,
- L. whereas a genuine 'fundamental rights culture' in the Union requires the development of an overall system for monitoring fundamental rights, which should include the Council and decisions in the field of intergovernmental cooperation,
- M. whereas a true 'fundamental rights culture' consists not only of passive compliance with the rules, but also of active promotion of fundamental rights and intervention in cases of violation or unsatisfactory protection of fundamental rights by the Member States,
- N. whereas an overall system for monitoring fundamental rights must provide for an annual debate involving the three institutions and national parliaments, particularly when the European Parliament reviews the progress made and the problems encountered in the development of the EU as an Area of Freedom, Security and Justice,
- O. whereas in such a debate it would be possible to consider:
 - the annual report on the future Fundamental Rights Agency,
 - a specific report by the Commission as part of its general report on the implementation of Community law,
 - a report by the Council on the aspects which it regards as having been significant in the past year with reference to respect for fundamental rights in the Union and by its Member States,

¹ House of Lords, European Union Committee, 16th Report, Session 2005-06, 'Human Rights Proofing EU Legislation', 29 November 2005, paragraph 149.

- P. whereas on the occasion of these annual debates the institutions should review the desirability of revising legislation which has restricted the exercise of freedoms on public security grounds,
- Q. whereas the existence of secret prisons and the illegal kidnappings by the CIA as part of counter-terrorism operations, the dilatory investigation and lack of cooperation on the part of several governments, or the transfer of airline passenger data and bank account data by SWIFT without legal basis only serve to shake the confidence of citizens in the ability and will of the European institutions to protect fundamental rights and to punish infractions,
1. Points to the historical task, in 'creating an ever closer Union' (Article 1 of the EU Treaty), of creating instruments for freedom alongside the development of instruments for security and justice and for economic and social progress;
 2. Stresses the need to overcome the crisis in the constitution process, to preserve the central achievements of the constitution, and to establish the Charter of Fundamental Rights as legally binding;
 3. Welcomes the Commission's proposals on the consolidation and improved transparency of the procedure on compliance with fundamental rights in its legislative proposals and considers this to be the first positive result of the ambitious measures on the protection of fundamental rights announced in Parliament by Commission President José Manuel Barroso on 17 November 2004, and the working parties set up by him to this end;
 4. Calls on the Commission to make the monitoring process more transparent and to consult with relevant actors in civil society, particularly those potentially affected by the Commission proposal;
 5. Stresses that the Commission's proposed 'systematic' monitoring makes it absolutely necessary for every legislative proposal to be thoroughly checked and for the result to be substantiated;
 6. Calls on the Commission to check the compliance of legislative proposals not only with the Charter of Fundamental Rights, but also with all European and international instruments regarding fundamental rights and with the rights derived from the constitutional traditions common to the Member States, as general principles of European law;
 7. Stresses that genuinely systematic and rigorous protection of fundamental rights calls not just for scrutiny to identify any legal errors in weighing up the respective importance of the freedom of the individual and the requirements of the public interest but, in addition, for political analysis on every occasion to ascertain which of the various solutions that weigh up these interests correctly produces the best balance between determination of the objective and restriction of fundamental rights (optimisation in terms of fundamental rights);
 8. Considers it desirable that scrutiny should concentrate on the fundamental rights specifically affected in each case, and considers it essential to state these on each occasion explicitly and individually in recitals;

9. Hopes that specific, practical ways can be found of applying the stated methods by means of which the Commission intends to implement the Charter of Fundamental Rights in its legislative proposals;
10. Points out that systematic internal monitoring to ensure that fundamental rights are upheld when legislative proposals are being drawn up must be the subject of an explanatory report which provides legal grounds for upholding such rights;
11. Calls on the Commission to think over 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;
12. Underlines the Commission's right, throughout the legislative procedure, to withdraw its proposal before it is approved by the Council, if there are changes which violate a fundamental right;
13. Rejects the Commission's reservations on bringing annulment proceedings 'on the basis of case-by-case political scrutiny' and strongly emphasises the absolute priority of the protection of fundamental rights and freedoms over all political considerations;
14. Considers it necessary to extend the procedure on compliance with the Charter of Fundamental Rights into the entire legislative procedure and into the comitology system, to strengthen the position of Parliament, to make the role of the prospective Fundamental Rights Agency more precise and to call more frequently on its support;
15. Intends to this end to amend Rule 34 of its Rules of Procedure, so as to entrust the Committee on Civil Liberties with the task of monitoring the consequences of legislative proposals, measures and regulations relevant to fundamental rights, and also to amend Rules 91 and 115 of its Rules of Procedure so that Parliament's resolutions can also apply to Member State affairs, enabling it to fulfil its responsibility pursuant to Articles 6 and 7 of the EU Treaty at an early stage;
16. Points out that, even though general consultation procedures exist, independent external bodies and organisations which are specifically concerned with fundamental-rights issues must be more extensively involved; to that end, calls upon the Commission to devise a specific arrangement for enabling those bodies and organisations to be consulted during the procedure for drafting legislative proposals which have an impact on fundamental rights;
17. Calls on the Council to strengthen the systematic monitoring of fundamental rights also in areas covered by intergovernmental cooperation, to publish the results and likewise to secure the support of the Fundamental Rights Agency;
18. Reaffirms that Parliament and other European Union institutions, may benefit, within the framework of the legislative procedure, as appropriate and on a voluntary basis, from the expertise on fundamental rights acquired by the Fundamental Rights Agency, as well as in the areas of police and judicial cooperation;

19. Recalls that, as agreed with Commission Vice-President Frattini and the Finnish Presidency during the trialogue held in Strasbourg on 15 November 2006, neither the Treaties nor the proposal for a regulation establishing a European Union Agency for Fundamental Rights preclude the possibility of Parliament seeking the assistance of the Fundamental Rights Agency when implementing Article 7 of the EU Treaty; expects that the Commission and the future Fundamental Rights Agency will provide in the multi-annual framework, as well as in the annual work programme, for the necessary financial and human resources, so that the Fundamental Rights Agency can respond adequately to requests from Parliament when exercising its powers according to Article 7 of the EU Treaty;
20. Stresses the importance of establishing suitable means of communicating with and informing the general public and the EU institutions concerning the internal monitoring of the upholding of fundamental rights, including by drawing up periodic reports on the subject;
21. Requests Member State parliaments, in particular in the fields of police and judicial cooperation and the common foreign and security policy, to verify the compatibility of all decisions and measures with the Charter of Fundamental Rights, so that the indivisibility of fundamental rights is preserved and the systematic and thorough monitoring of fundamental rights in all the Union's policies can be guaranteed;
22. Calls on the Council and the Commission, pursuant to Article 4 of the EU Treaty and Articles 200 and 212 of the EC Treaty, to submit a yearly report on the fundamental rights policy of the Union to Parliament and the national parliaments, and to engage in a systematic, open and permanent dialogue on the safeguarding of fundamental rights in the Union;
23. Calls on the Commission and the Council to report to Parliament on the follow-up given to the reports by the network of national experts;
24. Instructs its President to forward this resolution to the Council and Commission, and the governments and parliaments of the Member States and of the acceding and candidate countries.

23.11.2006

OPINION OF THE COMMITTEE ON CONSTITUTIONAL AFFAIRS

for the Committee on Civil Liberties, Justice and Home Affairs

on compliance with the Charter of Fundamental Rights in Commission legislative proposals:
methodology for systematic and rigorous monitoring
(2005/2169(INI))

Draftsman: Riccardo Ventre

SUGGESTIONS

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

1. Welcomes the new approach adopted by the Commission as regards upholding fundamental rights, which constitutes an ideal starting point for efforts to ensure that the EU's fundamental rights enjoy better protection and a higher profile;
2. Hopes that specific, practical ways can be found of applying the stated methods by means of which the Commission intends to implement the EU Charter of Fundamental Rights in its legislative proposals;
3. Considers that the Commission's concern for the protection of fundamental rights at every stage of the legislative procedure should be welcomed; points, however, to the need for the European Parliament - as a democratic body *par excellence* - to be more extensively involved in the procedure for verifying that legislative proposals are compatible with the rights laid down in the Charter;
4. Considers that the European Parliament's committees should be involved to a greater extent in monitoring the compatibility of legislative proposals with fundamental rights, and suggests in particular that the European Parliament's Rules of Procedure should be amended with a view to:
 - enabling the committee responsible for protecting fundamental rights to assess the impact of any Commission legislative proposal which is likely to have a bearing on

the rights laid down in the Charter;

- ensuring that whenever in the course of a legislative procedure the European Parliament or one of its committees raises an issue relating to the protection of fundamental rights, the matter in question can be referred to the relevant committee for verification and that the necessary coordination can be carried out;
5. Points out that, even though general consultation procedures exist, independent external bodies and organisations which are specifically concerned with fundamental-rights issues must be more extensively involved; to that end, calls upon the Commission to devise a specific arrangement for enabling those bodies and organisations to be consulted during the procedure for drafting legislative proposals which have an impact on fundamental rights;
 6. Considers that it must be possible for the future EU Human Rights Agency - when requested by the institutions concerned - to become involved through the issue of opinions relating to fundamental-rights issues raised when a legislative proposal is being drawn up or in the course of a specific legislative procedure;
 7. Points out that systematic internal monitoring to ensure that fundamental rights are upheld when legislative proposals are being drawn up must be the subject of an explanatory report which provides legal grounds for upholding such rights;
 8. Stresses the importance of establishing suitable means of communicating with and informing the general public and the EU institutions concerning the internal monitoring of the upholding of fundamental rights by ways including the drawing up of periodic reports on the subject.

PROCEDURE

Title	Compliance with the Charter of Fundamental Rights in Commission legislative proposals: methodology for systematic and rigorous monitoring
References	2005/2169(INI)
Committee responsible	LIBE
Opinion by Date announced in plenary	AFCO 29.9.2005
Enhanced cooperation – date announced in plenary	
Drafts(wo)man Date appointed	Riccardo Ventre 17.11.2005
Previous drafts(wo)man	
Discussed in committee	21.2.2006 20.3.2006 11.7.2006 22.11.2006
Date adopted	23.11.2006
Result of final vote	+: 11 -: 2 0: 0
Members present for the final vote	Richard Corbett, Panayiotis Demetriou, Andrew Duff, Maria da Assunção Esteves, Ingo Friedrich, Daniel Hannan, Jo Leinen, Íñigo Méndez de Vigo, Marie-Line Reynaud, Alexander Stubb
Substitute(s) present for the final vote	Ashley Mote, Gérard Onesta, Georgios Papastamkos
Substitute(s) under Rule 178(2) present for the final vote	
Comments (available in one language only)	

PROCEDURE

Title	Compliance with the Charter of Fundamental Rights in Commission legislative proposals: methodology for systematic and rigorous monitoring				
Procedure number	2005/2169(INI)				
Committee responsible Date authorisation announced in plenary	LIBE 29.9.2005				
Committee(s) asked for opinion(s) Date announced in plenary	AFCO 29.9.2005				
Not delivering opinion(s) Date of decision					
Enhanced cooperation Date announced in plenary					
Rapporteur(s) Date appointed	Johannes Voggenhuber 12.7.2005				
Previous rapporteur(s)					
Discussed in committee	4.10.2005	24.1.2006	22.2.2006	1.6.2006	22.11.2006
Date adopted	1.2.2007				
Result of final vote	+: -: 0:	37 6 0			
Members present for the final vote	Alexander Alvaro, Alfredo Antoniozzi, Edit Bauer, Mario Borghezio, Philip Bradbourn, Mihael Brejc, Michael Cashman, Mladen Petrov Chervenjakov, Carlos Coelho, Fausto Correia, Agustín Díaz de Mera García Consuegra, Konstantin Dimitrov, Kinga Gál, Patrick Gaubert, Adeline Hazan, Jeanine Hennis-Plasschaert, Ewa Klamt, Roger Knapman, Magda Kósáné Kovács, Barbara Kudrycka, Henrik Lax, Kartika Tamara Liotard, Sarah Ludford, Dan Mihalache, Javier Moreno Sánchez, Martine Roure, Søren Bo Søndergaard, Inger Segelström, Károly Ferenc Szabó, Adina-Ioana Vălean, Ioannis Varvitsiotis, Manfred Weber, Stefano Zappalà, Tatjana Ždanoka				
Substitute(s) present for the final vote	Simon Busuttil, Giuseppe Castiglione, Genowefa Grabowska, Sophia in 't Veld, Tchetin Kazak, Marian-Jean Marinescu, Radu Podgorean, Eva-Britt Svensson, Johannes Voggenhuber				
Substitute(s) under Rule 178(2) present for the final vote					
Date tabled	12.2.2007				
Comments (available in one language only)					