



SOC/671

New strategy for the implementation of the Charter of Fundamental Rights

OPINION

European Economic and Social Committee

**Communication from the Commission to the European Parliament, the Council, the European
Economic and Social Committee and the Committee of the Regions**

New strategy for the implementation of the Charter of Fundamental Rights

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1. **Conclusions and recommendations**

- 1.1 The Committee welcomes the new strategy devised by the Commission. The proposal contains clear commitments and places a firm emphasis on application and implementation issues. This is a direction that the Committee has consistently advocated, including in its opinion on the first strategy adopted in 2011¹.
- 1.2 Since then, major social, economic and political developments have complicated fundamental rights protection and brought new challenges for the current frameworks, including for the application of the Charter of Fundamental Rights. The current pandemic significantly increases risks to the health, safety and welfare of millions of people across the continent. At global level, where the EU has a major responsibility to act, the situation is even worse.
- 1.3 In this context, the EU institutions and Member States must act with a clear vision and greater drive in support of fundamental rights. Even though application of the Charter is limited to accompanying EU law, the growing body of regulations and cross-cutting integration of policy domains create ever-larger scope for action. This development is likely to have multiple implications for civil society, local communities, social partners and companies.
- 1.4 Unfortunately, after ten years of implementation of the Charter, there is still a limited knowledge among Europeans of its existence or role. It has also had limited use by civil society organisations, national human rights institutions and human rights defenders. We cannot wait for another decade to make the rights in the charter a reality for the general public, civil society and public institutions. We hope that the European Commission will be more active in informing citizens, the media, civil society, social partners and various other bodies about the Charter, its relevance, its effects and its related instruments.
- 1.5 All EU institutions have to stand firm and give strong support to all those civil society organisations, human rights activists and journalists who face physical and verbal attacks, intimidation and harassment, including abusive lawsuits, violence and online and offline hate speech. The smear campaigns that are affecting the credibility and legitimacy of civil society must stop and action should be taken against those Member States' governments which engage in it. Enforcement of current rules should be a priority.
- 1.6 The overall capacity of civil society organisations and human rights defenders to work within the Charter's framework should be significantly strengthened through a package that includes training and knowledge transfer, organisational support, stable and predictable financing, and protection from attacks and negative campaigns. The Committee stands ready to assist in developing a more comprehensive and detailed plan in this respect, especially through its Fundamental Rights and Rule of Law Group. Such an effort should be part of a comprehensive European civil society strategy, one that the EESC deems to be both urgent and necessary².

¹ (2011/C 376/14).

² In the study "The response of civil society organisations to face the COVID-19 pandemic and the consequent restrictive measures adopted in Europe" (2021), the EESC mapped the structural challenges unearthed by the pandemic and how civil society organisations responded.

- 1.7 The Committee welcomes the Commission's comprehensive approach to promoting and protecting the fundamental values on which the EU is founded and the complementarity between this strategy, the European democracy action plan and the first rule of law report. It also suggests including the EU anti-racism action plan in the comprehensive planning process, as well as the EU Disability and LGBTIQ Strategies. The challenges these plans and strategies seek to address are frequently common.
- 1.8 The EESC reiterates its observations on the economic aspects of the rule of law and fundamental rights. Threats to the rule of law and the overall deterioration of fundamental rights, if not stopped, are likely to negatively affect the mutual trust that underpins the internal market and hence economic growth in the EU³.
- 1.9 The Committee stresses that the Charter of Fundamental Rights also includes social rights. The implementation thereof is of considerable importance for people's lives. The social partners must be involved in protecting them, at European and national level. Social dialogue should be enhanced and refocused on the fundamental rights set out in the Charter. Renewing the call that the Committee made in its 2011 opinion on the strategy, greater emphasis should be placed on Title III - Equality and IV - Solidarity as being central to the EU as a democratic, value-based Union that takes its social model and commitments seriously.
- 1.10 The Committee welcomes the fact that the strategy underlines the overarching nature of the Charter and complements the targeted efforts to make EU rights and values more tangible in areas such as victims' rights and access to justice, equality and inclusion, anti-racism and pluralism, social rights and inclusive education and training, economic rights, rights of both EU and non-EU citizens and rights of the child. Special attention should be given to the impact of Covid-19 on the rights, welfare, and intellectual and emotional development of children. The EESC also notes the importance of Charter articles affecting the economic sphere such as freedom of enterprise, right of property and those linked to proper legal rules.
- 1.11 The Committee unreservedly supports the EU's commitment to promoting and protecting human rights and values worldwide. That trade agreements and their potential impact on fundamental rights are being highlighted is fully warranted. As stated in numerous opinions, the Committee also draws attention to migration and asylum policy as a key test case for the EU's commitment to protecting fundamental rights. More active support should be given to human rights defenders worldwide.
- 1.12 As the proposal indicates, national and local administrations, Member States' parliaments and law enforcement authorities are central to promoting and protecting Charter rights. It is not clear how the cooperation would be different from that in the last decade of implementation of the initial strategy. A key objective of this strategy should be to identify the proper mix of incentives and instruments which motivate national and local institutions to be more committed and proactive in relation to the protection of fundamental rights.

³ ECO/511-EESC-2020.

- 1.13 The Committee hopes that there will be a substantive improvement in all key dimensions of the strategy: prevention, promotion, implementation and enforcement. While not ignoring the others, it would be necessary to focus more on enforcement. Proper application of the Charter is essential for maintaining a functional, value-based Union. Application of the Charter is also mandatory. The Commission has to act accordingly and pursue infringement proceedings more aggressively when rights are not respected.
- 1.14 The Committee fully supports the nomination of Charter focal points by the Member States and suggests that they be placed at the centre of government or line ministries involved in the legislative process, for example ministries of justice.
- 1.15 Given the major impact of the COVID-19 pandemic on society, the Committee urges the Commission to focus the 2022 report on its effect on fundamental rights, especially those relating to socio-economic wellbeing, and thus firmly underline that social rights are fundamental rights. Special attention should be given to the rights, dignity and welfare of the elderly and people with disabilities who experience isolation in care homes during the COVID-19 pandemic.
- 1.16 The Committee suggests that each fund (Funds covered by the Common Provisions Regulation (CPR)) be overviewed by monitoring committees that include independent civil society organisations, national human rights institutions and human rights defenders. All these civil actors should be given a say in how the funds are allocated and managed. The EESC asks the Commission to take into consideration the recommendations from its Resolution "Involvement of Organised Civil Society in the National Recovery and Resilience Plans – What works and what does not?", published in February 2021.
- 1.17 The Committee calls on the Commission to identify and operationalise funding opportunities for civil society organisations and human rights defenders who are doing frontline work in marginalised and vulnerable communities. The Committee encourages the Member States to operationalise funding programmes for civil society and community groups defending human rights. The design of the programmes should protect the autonomy and independence of the funded entities.
- 1.18 The Committee proposes creating a responsive, swift and effective mechanism for identifying and reporting physical and verbal attacks, intimidation and harassment, including abusive lawsuits, violence and online and offline hate speech, against civil society organisations and human rights defenders. NHRIs (national human rights institutions) and national social and economic committees should be included in this mechanism.
- 1.19 In order to facilitate coordination, the Committee suggests that Member States set up national fundamental rights forums in which all the entities concerned could work together: national human right institutions, national equality bodies, ombudsmen, the newly-established Charter focal points and other public bodies. The forums should include organisations and human rights defenders. The Fundamental Rights Agency can assist when these forums are set up.

- 1.20 The Committee proposes that the Commission set up a special assistance programme aimed at bringing all the NHRIs up to a higher, more uniform institutional capacity (creation, accreditation and steps to ensure compliance) and develop specific guidance for the Member States. As in the case of other instruments and programmes, the EESC recommends better and more extensive use of the remarkable expertise of the Fundamental Rights Agency. Continuing its solid work on key developments in the area of fundamental rights, we encourage the Agency to closely monitor the protection of social rights. The Agency should also become more visible and more easily accessible to the general public and civil society groups and organisations.
- 1.21 The Committee suggests that the Commission organise special consultation events and reports on specific titles and articles, open to contributions and insights from HRNIs, civil society organisations and human rights defenders. The EESC is more than open to closely cooperating with the Commission in organising these types of meetings on a regular basis involving civil society representatives.
- 1.22 The Committee is looking forward to the Commission's work on an awareness-raising campaign. Given the importance and urgency of this measure, it would have been helpful to further specify in this strategy the aims, timeline, target groups, instruments, partners and proposed budget for the campaign. The EESC encourages the European Commission to organise Charter-related activities as part of its Conference on the Future of Europe, and to bring fundamental rights issues closer to the citizen and public agenda.
- 1.23 More research and consultation is necessary to develop an understanding of the Charter's application, based on risk and vulnerabilities, which are more likely to be encountered in certain social groups and regional communities.

2. General comments

2.1 Background to the opinion

- 2.1.1 The Charter applies to all measures by EU institutions. The European Commission's 2010 strategy for effective implementation by the European Union of the Charter of Fundamental Rights underlined how important it was for the EU to show a good example; it set out how the Commission was going to ensure that it fully complied with the Charter. The Charter also applies to Member States when implementing EU law.
- 2.1.2 The Charter has triggered new EU legislation, directly protecting and promoting certain key rights. Key examples are the new rules on data protection, gender equality, protection of whistleblowers, fair trial and defence rights, and victims of crime. EU Court of Justice case-law invoking the Charter has developed significantly in a wide range of policy areas.
- 2.1.3 The EU Agency for Fundamental Rights has developed into a trusted EU body providing comparable data and analysis on fundamental rights to support the work of the EU institutions and Member States. The number of independent national human rights institutions and bodies has also risen significantly in the EU.

2.1.4 However, three Member States have no NHRI (Czech Republic, Italy, Malta⁴), two have no accredited NHRI (Estonia - up for accreditation end 2020 - and Romania), and six have no United Nations' Paris principles-compliant A-status NHRI (Austria, Belgium, Cyprus, Slovakia, Slovenia and Sweden).

2.1.5 A recent Eurobarometer on Charter awareness shows that only 42% of respondents have heard about the Charter and only 12% really know what it is. Six out of ten respondents want to know more about their rights and where to turn to if their Charter rights are violated⁵.

2.1.6 The EESC has a long-standing commitment to supporting human rights and human rights defenders. The Committee is an integral part of the fundamental rights culture and frameworks as it is involved in various structures and activities, gives voice to citizen, civil society and social partner concerns and formulates policy and regulatory proposals with a rights-based vision. To reinforce its efforts, the EESC has created its own Fundamental Right and Rule of Law Group in support of its vision and responsibility.

2.2 Ensuring effective application of the Charter by the Member States

2.2.1 The Committee fully supports the Commission's proposal to invite Member States to nominate Charter focal points. Their role, easing the flow of information and best practice relating to the Charter and coordinating capacity-building efforts in the country concerned, is central to advancing the fundamental rights agenda. Ideally they should be placed at the centre of government or line ministries involved in the legislative process, for example ministries of justice.

2.2.2 The new approach adopted when drafting the annual report on the application of the Charter in the EU, namely looking more closely at the Charter's application in the Member States, is pertinent. The Committee also welcomes the focus on fundamental rights in the digital age in the new Charter report for 2021. Given the major impact of the COVID-19 pandemic on society, the Committee urges the Commission to focus the 2022 report on its effect on fundamental rights, especially those relating to socio-economic wellbeing. Another aspect that needs to be addressed is the move of EU governments into emergency mode, sometimes to the detriment of parliamentary oversight and the democratic checks and balances. The EESC considers that the measures to combat the pandemic should be fully democratic, temporary and proportionate.

2.2.3 The Committee urges the Commission to launch infringement procedures more vigorously where appropriate and where there is a breach of EU law.

2.2.4 The Committee welcomes the Commission's proposal that for all programmes supported by EU funds covered by the CPR ('CPR funds') there must be effective mechanisms in place to ensure their compliance with the Charter, from their inception to their implementation. The Committee

⁴ Malta has made significant progress and is expected to set up its NHRI soon.

⁵ Special Eurobarometer 487b.

suggests that each fund be overviewed by monitoring committees that include civil society organisations, national human rights institutions and human rights defenders. This would help close the knowledge gap in CPR implementation bodies with regard to fundamental rights and greatly enhance the capacity of fundamental rights organisations to have a real impact at grassroots level.

- 2.2.5 The Committee urges the Commission to closely monitor the extent to which EU funds are used in compliance with the Charter and calls for appropriate and warranted measures to be taken, such as possible interruption or suspension of EU funding, or financial corrections when irregular expenditure has not been corrected by Member States. Furthermore, the Committee encourages the Commission to move upstream the Charter compliance checks in connection with major budgetary allocations.
- 2.2.6 The objective set out in the proposal, namely to promote a supportive, safe environment for civil society organisations and rights defenders in their countries, including at local level, is indeed necessary. Yet, there are no clear indications as to how the objective will be pursued. The Committee calls on the Commission to identify and operationalise funding opportunities for civil society organisations and human right defenders who are doing frontline work in marginalised and vulnerable communities.
- 2.2.7 The Committee proposes creating a responsive, swift and efficient mechanism for identifying and reporting physical and verbal attacks, intimidation and harassment, including abusive lawsuits, violence and online and offline hate speech, against civil society organisations and human rights defenders. NHRIs and national social and economic committees should be included in this alert mechanism. The EESC is also willing to contribute to setting up the mechanism and to work with other EU institutions towards the effective protection of and remedies for the organisations and people concerned.
- 2.2.8 It is more than encouraging to see the Commission's commitment to aligning efforts to secure democracy, rule of law and fundamental rights protection⁶. The Committee considers that the same coordination principles should be replicated at the national level. Too often the various institutions and organisations, public and non-governmental, do not cooperate enough. Thus, the Commission can ask Member States to set up national fundamental rights forums in which all the entities concerned could work together: national human right institutions, national equality bodies, ombudsmen, the newly established Charter focal points and other public bodies. The forums should include civil society organisations and human rights defenders.
- 2.2.9 The creation and accreditation of national human rights institutions and steps to ensure their compliance with the United Nations' Paris principles⁷ should be a priority, and more support should be made available for this. The Committee proposes that the Commission set up a special

⁶ Coordination at EU level can include the European Network of National Human Rights Institutions (ENNHRI), the European Network of Equality Bodies (Equinet) and the European Network of Ombudsmen (ENO). Coordination at national level can be rendered effective by a core of national institutions.

⁷ The United Nations Paris Principles provide the international benchmarks against which NHRIs can be accredited by the Global Alliance of National Human Rights Institutions (GANHRI).

assistance programme aimed at bringing all NHRIs up to a higher and more uniform institutional capacity.

2.3 Fostering the use of the Charter as a compass for EU institutions

- 2.3.1 A check of key Commission initiatives as of the preparatory stage of the initiative will hopefully remain a central concern for the Commission throughout the decision-making process. The fact that the Digital Services Act is highlighted in the proposal and that work is being carried out to ensure compliance with the Charter is appropriate for presenting the wide range of issues and implications that compliance is bringing up.
- 2.3.2 Thorough preparation of key Commission initiatives is very important. At the same time, the thematic development of compliance should be complemented with Charter-based thinking and analysis, centred on the various titles and articles, as structured in the annual report. One way to achieve that would be to organise special events and reports on specific titles and articles, open to contributions and insights from HRNIs, civil society organisations and human right defenders. This would allow substantial knowledge to be accumulated on the specific articles and the rights they protect and project a clearer picture of the overall impact of EU law and policy-making on the lives and rights of members of the general public.
- 2.3.3 As suggested in point 2.6 above, due to the major impact of the COVID-19 pandemic on European society, it is necessary to focus on the state of related rights. Thus, we would encourage the Commission to highlight in the annual reports the impact of COVID-19 and the multiple crises it has caused for the protection of fundamental rights.
- 2.3.4 In that connection, and renewing the call the Committee issued in its 2011 opinion on the strategy, more emphasis should be placed on Titles III - Equality and IV - Solidarity as being central to the EU as a democratic, value-based Union that takes its social model and commitments seriously.
- 2.3.5 The Committee unreservedly supports the EU's commitment to promoting and protecting human rights and values worldwide. That trade agreements and their potential impact on fundamental rights are being highlighted is fully warranted. As stated in numerous opinions, the Committee also draws attention to migration and asylum policy as a key test case for the EU's commitment to protecting fundamental rights. It would also point out that democratic stability and the consequent human right protection systems in the European neighbourhood are under pressure and more should be done to support them. More active support should be given to human rights defenders worldwide.
- 2.3.6 The Committee encourages the European Parliament and the Council to use the tools at their disposal to ensure that the Charter is applied effectively in their work, with the assistance of the Commission and involving the relevant consultative European bodies in the preparation of legislation. The EESC is ready to participate in such inter-institutional dialogue and work.

2.4 **Strengthening people's awareness of their rights under the Charter**

- 2.4.1 The Committee is looking forward to the Commission's work on an awareness-raising campaign, aimed at better informing people about their Charter rights and where to turn when their rights are violated. Given the importance and urgency of this measure, it would have been helpful to further specify in this strategy the aims, timeline, target groups, instruments, partners and proposed budget for this campaign.
- 2.4.2 The awareness campaign should be designed to complement other measures. We recommend that work be started with civil society organisations and state-level bodies, including the judiciary, on training, the transfer of good practice and communication for the public once minimal institutional capacity is in place. The organisations and bodies above can act as resources, helping people place the protection of their fundamental rights in a supportive social and institutional environment.
- 2.4.3 In that connection, awareness-raising campaigns should be designed to reach those most likely to experience violations of fundamental rights. More research and consultation is necessary to develop an understanding of the Charter's application, based on risk and vulnerabilities, which are more likely to be encountered in certain social groups and regional communities. This would help steer the measures taken by various bodies and also inform various consultation and participation initiatives.
- 2.4.4 The EESC encourages the European Commission to organise Charter-related activities as part of its Conference on the Future of Europe and to bring fundamental rights issues closer to the citizen and the public agenda.

Brussels, 10 June 2021

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The president of the European Economic and Social Committee
