

N.B. Note that questions on the Progress programme and the HU Constitution were addressed in the meantime (cf. EP Plenary debate of 8 June).

1. FUNDAMENTAL RIGHTS

- With regard to fundamental rights, the Commission notes that, according to Article 51 (1) of the Charter of Fundamental Rights, the provisions of the Charter are addressed to the Member States only when they are implementing Union law. In its Communication of 19 October 2010 *Strategy for the effective implementation of the Charter of Fundamental Rights of the EU*, the Commission has explained its approach in ensuring respect of the Charter by Member States when implementing Union law. If a Member State does not respect fundamental rights when implementing Union law, the Commission, as guardian of the Treaties, can intervene by way of infringement proceedings and may, if necessary, take the matter to the Court of Justice. In the absence of a connection with Union law, the fundamental rights of the persons affected are protected by the national courts and once domestic legal remedies have been exhausted, by the European Court of Human Rights. The Commission believes that the idea of introducing a mechanism for the freezing of national measures potentially violating fundamental rights in the implementation of EU law would raise a number of complex legal and institutional questions. It would probably require an amendment of the existing Treaties which would be premature. The Commission believes that work needs to focus on applying in practice the Charter in EU law.
- With regard to the issue of the Spanish coastal law, the Commission can only intervene if the matter concerns the implementation of Union law. The Commission is in contact with the Spanish authorities to see whether discrimination on the grounds of nationality arises.
- The 2010 Annual Report on the application of the Charter highlights the need to communicate more clearly on where the Charter applies and who does what in the area of fundamental rights. National authorities, EU institutions and other bodies, including the EU Agency for Fundamental Rights, should make a common effort to better inform citizens in order to avoid delays in the enforcement of fundamental rights and disappointment of citizens. On 6 October 2011, the Commission will, together with the European Parliament's Committee on Petitions, organise a seminar to explore how complaints on fundamental rights are handled at EU and Member State level. Another aim of the conference is to identify best practices in this field and look at ways to improve cooperation between bodies and institutions, particularly between the EU and the national level. Participants will be invited from EU institutions, bodies and agencies, representatives of National Human Rights institutions, Ombudsmen, Children's Ombudsperson, Equality bodies, as well as the Council of Europe and the UN.

The Commission ensures the compliance of Commission proposals with fundamental rights through impact assessments. In its Communication of 19 October 2010, the Commission has underlined the responsibility of the co-legislators for ensuring that Commission legislative proposals remain consistent with fundamental rights throughout the legislative process. The Commission has clarified that it will strongly defend its position when it comes to the standards of fundamental rights protection contained in its proposal, and will notify co-legislators of its opposition if they seek to lower those standards. It has also explained that in such cases it will not hesitate to use all the means at its disposal, which may include requesting that the act be adopted unanimously or, where applicable, withdrawing its proposal or bringing an action for annulment of the provisions in question. In this respect, the Commission warmly welcomes the recent adoption of the

Council's Guidelines on checking the fundamental rights compatibility of its actions. The Commission is also looking forward to the measures the European Parliament will put in place to ensure that its internal procedures are "fit for the job".

- The European Union Agency for Fundamental Rights (FRA) is a body, independent from the Commission. The Commission is, therefore, not in a position to comment on the grounds on which FRA turned down two requests of the EP for FRA opinions.
- Article 10(5) of Regulation 168/2007 establishing FRA indicates that the Fundamental Rights Platform shall be coordinated under the authority of its Director. The Commission does not participate in such coordination and has therefore requested the Agency to provide a reply to this question. The Agency's reply will be transmitted to the LIBE Committee as soon as possible.
- On the European Union accession to the European Convention on Human Rights (ECHR), it is envisaged, in the draft accession agreement, that in proceedings before the European Court of Human Rights, if the Court of Justice has not yet assessed the compatibility with the Convention rights at issue of the provisions of European law, the compatibility with the Convention rights at issue is called into question. It is called into question by an allegation of a violation of the Convention; sufficient time shall be afforded for the Court of Justice to make such an assessment and subsequently for the parties to make observations. The European Union shall ensure that such assessment is made quickly so that the proceedings before the European Court of Human Rights are not unduly delayed. The latter aspect will be ensured by EU internal rules which should provide for an accelerated procedure, which already exists in other areas.
- As to the involvement of the European Parliament, it is envisaged in the draft accession agreement that a delegation of the European Parliament shall be entitled to participate, with the right to vote, in the sittings of the Parliamentary Assembly of the Council of Europe whenever the Assembly exercises its functions related to the election of judges in accordance with Article 22 of the Convention. The number of representatives of the European Parliament shall be the same as the highest number of representatives to which a State is entitled pursuant to Article 26 of the Statute of the Council of Europe (i.e. currently 18).

1.a DATA PROTECTION

- The role of the Data Protection Authorities is essential for the enforcement of the rules on data protection. The DPAs are independent guardians of fundamental rights and freedoms with respect to the protection of personal data, upon which individuals rely to ensure the protection of their personal data and the lawfulness of processing operations. Several national data protection supervisory authorities (DPAs) are entrusted with limited powers to fulfil the supervisory tasks they are required to fulfil under Directive 95/46/EC¹. The situation varies considerably among Member States. For this reason, the Commission believes that their role should be strengthened, especially having regard to the ECJ case law on their complete independence, and they should be provided with the necessary powers and resources to properly exercise their tasks both at national level and when co-operating with each other.

¹ [Directive 95/46/EC](#) of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23 November 1995, p. 31);

- The Commission will present in 2011 its second report on the implementation of Commission Decision 520/2000/EC on the adequate protection of personal data provided by the Safe Harbour Privacy Principles and related Frequently Asked Questions issued by the US Department of Commerce.² This second report will examine developments since the last report in 2004 and address some of the outstanding issues which will need further work.

2. FREE MOVEMENT

In accordance with the priorities established by the Annual Report on the Control of Application of Community law, the Commission has been holding a dialogue since 2009 with all Member States on the quality of transposition of the free movement Directive (Directive 2004/38/EC). In the last year, the Commission met the authorities of all 27 Member States to discuss all the issues of implementation identified as problematic. In 2011, positive results could be visible, since a majority of Member States, following the bilateral meetings and exchanges with the Commission, modified their law or announced amendments including a precise calendar to ensure full transposition of Directive 2004/38/EC. For non-compliant Member States, the Commission is using its powers under the Treaty and launches infringement proceedings where necessary. In the last three months, such infringement proceedings for non-transposition of Directive 2004/38/EC have been launched against ten Member States.

- The Commission asked the French government to ensure that all the material and procedural safeguards of the 2004/38 Directive were explicitly included in French legislation and that this legislation was adopted swiftly. Provisions to this effect have been integrated in the draft law on immigration, integration and nationality. The French Constitutional Council rendered its Decision on 9 June on the draft law, and the law is expected to be published shortly. As soon as the law is published, the French authorities will also adapt the relevant circulars and instructions to match the new rules. The Commission will make the relevant documents available to the European Parliament as soon as the French law is in place and the case has been closed.
- Directive 2004/38/EC on free movement allows family members to accompany Union citizens having exercised the right to freedom of movement or residence, irrespective of sexual orientation. The Directive provides for a right of entry and residence regardless of the recognition of a same-sex marriage or partnership. However, as stated in the 2010 EU Report on Citizenship adopted by the Commission on 27 October 2010, European citizens are still confronted in daily life with many obstacles to the exercise of these rights, for example problems related to public documents such as civil status certificates. In a cross-border situation, the main question is whether a legal situation recorded in a civil status document in one Member State will be recognised in another. A civil status attributed in one Member State is not necessarily recognised in another Member State because of the difference in national rules applicable to the matter. With its Green Paper on free movement of public documents and recognition of the effects of civil status records, the Commission a wide consultation to see how the situation could be improved in that respect. The consultation period expired at the end of April

² [Commission Decision 2000/520/EC](#) of 26 July 2000 pursuant to Directive 95/46/EC of the European Parliament and of the Council on the adequacy of the protection provided by the safe harbour privacy principles and related frequently asked questions issued by the US Department of Commerce ([OJ L 215, 25 August 2000, p. 7](#); Corrigendum: [OJ L 115, 25 April 2001, p. 14](#)).

2011. The Commission has received numerous replies to the Green Paper and all those contributions are currently being examined in order to prepare the next step and the appropriate future initiative on the recognition of civil status records.

3. ROMA ISSUES

- The protection of the fundamental rights of Roma and the fight against the discrimination they face, especially in access to employment, education, healthcare and goods and services is already well covered by the EU legal framework, in particular by the Race Equality Directive. The Commission is monitoring its implementation in Member States, taking into account individual complaints that cannot be solved through the mechanisms defined by the Directive. The recently adopted EU framework for national Roma integration strategies aims at completing the existing legal protection by encouraging Member States to tackle the root causes of the current exclusion affecting significant numbers of persons of Roma origin in the EU.
- The Commission met with non-governmental organisations in 2011 while developing the European Union Framework for national strategies for Roma integration for the period until 2020. During the current implementation period of this Framework, the Commission will ensure that civil society continue to be closely involved in the process especially in following progress at national level and to this effect, a first meeting will take place on 30 June. Other meetings will follow, in particular with the Platform for the inclusion of the Roma whose role will be strengthened. Given the competencies conferred on the European Union by the Treaty, the successful implementation of the national strategies for integration of the Roma will depend on the political will of Member States. I am confident that they will accept their responsibility as was shown by the Council³ conclusions adopted on 19 May and endorsed by the European Council on 24 June. When Member States submit their national strategy evaluations at the end of 2011, the Commission will ensure that these cover not only national Rom communities from each individual Member State but also those coming from other countries.

4. NON DISCRIMINATION

- The Commission has been working very closely with all Council Presidencies since 2008 on the legislative proposal for an Equal Treatment Directive to address the concerns raised by certain Member States, in particular on legal certainty. Nevertheless, it has not been possible so far to overcome the objections of some. In accordance with Article 19 TFEU, the Council must adopt the proposal by unanimity, after obtaining the European Parliament's consent. The Commission will continue working with the future Council Presidencies to make progress on this important proposal..
- The Commission is committed to fighting against racism and xenophobia at EU level by using all instruments available. The Framework Decision on combating racism and xenophobia is a key instrument in the fight against racist and xenophobic speech in the EU. The Lisbon Treaty prevents the Commission from exercising its enforcement powers vis-à-vis former third pillar instruments until 2014. The Commission has so far received notifications from 11 Member States on its implementation and has reminded the remaining countries of their obligation to implement this instrument as soon as possible. A group of governmental experts has been created to ensure a full and correct transposition

³ 10658/11

of this Framework Decision. The Commission's report on the implementation of the Framework Decision is due in 2013.

- Article 21 of the Charter of Fundamental Rights prohibits discrimination on the grounds of sexual orientation. EU directives prohibit any discrimination based on sexual orientation: Directive 2000/78/EC as regards employment and occupation and Directive 2000/43, the Equality Directive, on the basis of racial or ethnic origin in a number of specific fields such as employment, education, social security, healthcare and access to and supply of goods and services available to the public, including housing.

5. VICTIMS' PACKAGE

- Victims of terrorism and of organised crime will benefit from the proposed enforceable minimum standards on the rights, support and protection of all victims of crime proposed by the Commission on 18 May. The Commission proposes to determine vulnerability and any special needs of victims on the basis of an individual assessment that should take into account both the victim's personal characteristics and the nature or type of crime the victim has suffered, such as terrorism and organised crime.
Victims of terrorism and of organised crime will also benefit from provisions that give them a right to information, to participate in criminal proceedings and to receiving adequate protection during proceedings. They will also have access to victim support services, and Member States are encouraged to provide specialist support services. The Commission will analyse the ensuing gaps in the protection of victims of terrorism with a view to improving their situation.