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COVER NOTE

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signed by Mr Jordi AYET PUIGARNAU, Director

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**REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT, THE
COUNCIL, THE EUROPEAN ECONOMIC AND SOCIAL COMMITTEE AND THE
COMMITTEE OF THE REGIONS**

2014 Report on the Application of the EU Charter of Fundamental Rights

{SWD(2015) 99 final}

1. Introduction

This fifth annual report reviews how the European Union (EU) and its Member States gave effect to the EU Charter of Fundamental Rights (Charter) in 2014.

The Charter has been legally binding since 1 December 2009. It is binding on EU institutions when enacting new measures. It binds Member States when they act within the scope of EU law. As a young source of law, the Charter has steadily gained legal importance. In 2014, 210 decisions in EU Courts¹ quoted the Charter,² compared with 43 in 2011, 87 in 2012 and 114 in 2013.

The new Commission under President Juncker took office in November 2014. President Juncker committed *'...to make use of the prerogatives of the Commission to uphold, within our field of competence, our shared values and fundamental rights, while taking due account of the diversity of constitutional and cultural traditions of the 28 Member States.'*³ He gave responsibility for fundamental rights to the First Vice-President, Frans Timmermans.

The Commission mainstreams the Charter in all its policies. It works closely with national, European and international organisations to ensure promotion of fundamental rights.

In his hearing before the European Parliament, First Vice-President Timmermans committed to organise an annual colloquium on the state of play of fundamental rights in the EU, to improve mutual cooperation and political engagement for the promotion and protection of fundamental rights. At the colloquium, Member States, institutions and stakeholders will hold discussions to identify and deliver policy actions on fundamental rights issues. The first colloquium in October 2015 will focus on promoting tolerance and respect, in particular to prevent and combat anti-Semitic and anti-Muslim hatred. It is preceded by consultations with civil society and stakeholders, including two high-level dialogues, one with religious leaders and one with representatives of non-confessional organisations.

This report reviews the application of the Charter by and to EU institutions — the European Commission in particular — and Member States. It highlights the importance of the European Convention of Human Rights (ECHR) and provides an update on EU accession to it. For the first time,

¹ General Court, Civil Service Tribunal, and Court of Justice (CJEU).

² See Appendix I in the Staff Working Document for an overview of 2014 CJEU case law that directly quotes the Charter or mentions it in its reasoning.

³ See Jean-Claude Juncker, 'Political Guidelines for the Next European Commission', http://ec.europa.eu/priorities/docs/pg_en.pdf, p. 8.

the report includes a section on a topical emerging issue: this year ‘fundamental rights in the digital environment’.

2. Application of the Charter by and to the EU in all its actions

In all their actions, EU institutions are obliged to comply with the Charter.

2.1 Legislative action

Systematic fundamental rights checks during the legislative process are necessary to guarantee the compliance of draft legislation with the Charter. In 2011, the Commission published ‘Operational Guidance on taking account of Fundamental Rights in Commission Impact Assessments’.⁴ In 2014, the Commission committed to revise its impact assessment guidelines and held a public consultation.⁵

The *Digital Rights Ireland* case⁶ illustrated the need for fundamental rights checks of draft legislation. The Court ruled the Data Retention Directive⁷ invalid for infringements of the fundamental rights to privacy and protection of personal data guaranteed by Article 7 and 8 of the Charter. This judgment clarified that specific safeguards to protect fundamental rights, including provisions on exceptions for professional secrecy and prior administrative or judicial review, have to be included in secondary EU legislation and cannot be left to the discretion of the national legislator. The CJEU ruled that data retention serves a legitimate objective of general interest, namely the fight against serious organised crime, and is an appropriate means for attaining this objective. However, it held that the interference by the Directive with the fundamental rights to respect for private life and to the protection of personal data was not limited to what is strictly necessary.

This judgment is important for all EU institutions involved in the legislative process. In December 2014, the Council updated its ‘Guidelines on methodological steps to be taken to check fundamental rights compatibility at the Council preparatory bodies’.⁸ It provided training to Council staff to make these guidelines more operational.

⁴ SEC(2011) 567 final, 6.5.2011.

⁵ http://ec.europa.eu/smart-regulation/impact/consultation_2014/index_en.htm.

⁶ CJEU judgment of 8.4.2014 in Cases C-293/12 and C-594/12 *Digital Rights Ireland and Kaertner Landesregierung*.

⁷ Directive 2006/24/EC, OJ L 105/54.

⁸ General Secretariat of the Council, ST 53772015 INIT.

2.2 Management of EU Funds

When managing EU funds, institutions, bodies, offices and agencies of the Union must respect fundamental rights under the Charter. Member States, when they implement Union law, are under an equal obligation.

In the case *Liivimaa Lihaveis MTU*⁹ the Court confirmed earlier jurisprudence that ‘implementing Union law’ requires a certain degree of connection above and beyond the matters covered being closely related or one of those matters having an indirect impact on the other.¹⁰ In that case, EU law required the two Member States involved in the operational programme to implement it. Firstly, those Member States were required to set up a monitoring committee, pursuant to Article 63(1) and (2) of Regulation No 1083/2006. Secondly, all measures to apply that programme had to comply with Regulations No 1083/2006 and No 1080/2006. The CJEU held that the adoption of the programme manual by the monitoring committee implements EU law within the meaning of Article 51(1) of the Charter. The programme manual excluded the possibility of judicial review of decisions by the monitoring committee to reject a subsidy; the CJEU held this to infringe the right to an effective remedy under Article 47 of the Charter.

In May 2014, the European Ombudsman opened an investigation into respect for fundamental rights in EU cohesion policy.¹¹ In its reply of 29 October 2014,¹² the Commission committed to adopting measures to increase Charter awareness among Member States when managing European Structural and Investment Funds (ESI funds). The Commission has formally reminded Member States of their obligations to respect the Charter. It also offers assistance from ESI funds to support complaint procedures. The Commission will disseminate good practices and issue guidance to Member States on respect of the Charter when managing ESI funds in 2015.

The Commission had identified a possible violation of fundamental rights protection in a temporary detention centre for irregular migrants; the Court of Auditors confirmed this assessment in a special report in 2014. Rental costs for the centre had been included in a national programme under the External Borders Fund and the Commission had not accepted the corresponding costs when the programme closed. The Court of Auditors found that the Member State had not complied with the prohibition of degrading treatment (Article 4 of the Charter) and the principle of human dignity (Article 1 of the Charter) due to the bad conditions in which irregular migrants were detained.

⁹ CJEU judgment of 12.9.2014 in Case C-562/12 *Liivimaa Lihaveis MTi*.

¹⁰ CJEU judgment of 29.05.1997 in Case C-299/95 *Kremzow*, para. 16.

¹¹ <http://www.ombudsman.europa.eu/en/press/release.faces/en/54420/html.bookmark>.

¹² <http://www.ombudsman.europa.eu/en/cases/correspondence.faces/en/58451/html.bookmark>.

2.3 Human rights dimension of EU external actions

Article 21 of the Treaty on European Union (TEU) guides the Union's external action. It reaffirms the EU's role in promoting democracy, the rule of law, the universality and indivisibility of human rights and respect for the principles of the United Nations Charter and international law. Countries seeking to join the EU must respect human rights. All cooperation and trade agreements with third countries stipulate that human rights¹³ are an essential element in relations between the parties.

In 2014, the European External Action Service and the Commission assessed the Action Plan on Human Rights and Democracy (2012-14).¹⁴ The Action Plan set out 97 specific actions. One example are the EU Guidelines on Freedom of Expression online and offline, adopted by the Council in May 2014. The Guidelines provide definitions and guidance on how to protect the right to freedom of expression, covering all its aspects, including the right to hold opinions without interference, the right to seek and receive information and the right to impart information and ideas of all kinds through any media and regardless of frontiers.

A new 2015-19 Action Plan is planned, with a focus on ensuring coherence between internal and external human rights policies, notably for counterterrorism, migration and mobility, and trade.

In order to achieve the objectives of Article 21 TEU, the EU applies restrictive measures¹⁵, which often give effect to binding Resolutions of the UN Security Council based on Article 41 or 42 of the Charter of the United Nations, but which can also be autonomous EU measures. Some of the restrictive measures involve the listing of individuals and entities to have their funds and economic resources frozen. For the individuals and entities concerned, the right to good administration, to an effective remedy and to a fair trial (Articles 41 and 47 of the EU Charter of fundamental rights) are crucial. In 2014, the CJEU heard cases concerning the procedure to impose restrictive measures on individuals and entities. Of more than 30 judgments issued in 2014 on the legality of the restrictive measures imposed, the Court upheld the listings in only one quarter of cases; in all other cases, the listing decisions were annulled.

One case —the *Yusef* judgment¹⁶ — concerned restrictive measures taken based on Council Regulation (EC) No 881/2002.¹⁷ This regulation gives effect to a UN Security Council resolution on the freezing of assets of individuals, entities and groups identified by the UN Sanctions Committee as associated

¹³ The term 'fundamental rights' is used in the EU to express the concept of 'human rights' within a specific internal EU context. Traditionally, the term 'fundamental rights' is used in a constitutional setting whereas the term 'human rights' is used in international law.

¹⁴ http://eeas.europa.eu/human_rights/index_en.htm.

¹⁵ See Article 215 TFEU.

¹⁶ CJEU judgment of 21.3.2014 in Case T-306/10 *Hani El Sayyed Elsebai Yusef v European Commission*.

¹⁷ Regulation No 881/2002, OJ L 139/9.

with Al Qaida. The General Court ruled that the Commission had failed to act as it had not remedied procedural deficiencies and substantive irregularities affecting the freezing of Mr Yusef's funds. It thus called on the Commission to discharge its obligation to examine the ground for listing carefully and impartially and where appropriate in 'effective cooperation' with the UN Sanctions Committee.¹⁸ The Commission is reviewing the grounds for listing in cooperation with the relevant UN bodies.

Most of the cases¹⁹ where restrictive measures against entities or individuals were annulled by the CJEU concerned Council decisions and regulations, in which the evidence or information substantiating the grounds for listing was not sufficient and the burden of proof, which rested on the Council under Article 47 of the Charter, as interpreted in the *Kadi II* case,²⁰ was not discharged. Other cases were annulled for procedural reasons.²¹

In trade policy, the revised unilateral Generalised Scheme of Preferences (GSP+) arrangement, which requires respect of core human rights conventions, started to apply on 1 January 2014. The monitoring mechanism has been significantly strengthened, ensuring that GSP+ beneficiaries comply with their obligations, in particular whether they ratify and implement 27 international conventions on human rights and other issues. The European Parliament and Council also pay closer scrutiny.

3. Application of the Charter by and to the Member States

Under the control of the CJEU, the Commission oversees respect of the Charter by Member States, when they implement EU law. If it becomes aware of a breach, the Commission can open infringement proceedings. National judges are aware of the Charter as an instrument to ensure compliance with fundamental rights by Member States. Provisions of EU law and national law based on EU law must be interpreted in coherence with Charter obligations, so as to give effect to the rights guaranteed under it. Where a national court has doubts as to the applicability of the Charter or the correct interpretation of its provisions, it can — and, in the case of a national court of last instance, must — refer to the CJEU for a preliminary ruling. The CJEU's answer enables the national court to decide the case. National judges regularly use this procedure. It helps the development of Charter-

¹⁸ *Ibid.*, at para. 102.

¹⁹ For instance CJEU judgment of 3.07.2014 in Case T-565/12 *National Iranian Tanker Company v Council*; CJEU judgment of 9.12.2014 in Case T-439/11 *Sport-pari v Council*.

²⁰ CJEU judgment of 18.07.2013 in Case C-584/10 P *Commission and Others v Kadi* (Kadi II), Appeal Case against T-85/09 *Kadi v Commission* (Kadi I).

²¹ See, for example, *LTTE v Council*, T-208/11 and T-508/11. That judgment is subject to an ongoing appeal in case C-599/14 P..

related case law and strengthens the role of national judges in upholding it. In 2014, national judges made 43 such referrals for a preliminary ruling,²² slightly more than in previous years.²³

3.1 Infringement proceedings

Whereas the Charter was mentioned in five infringement proceedings in 2013, in 2014 the Commission has referred to the Charter in 11 cases of proceedings based on Articles 258-260 TFEU. The Charter is addressed to Member States only when they are implementing Union law. Therefore, infringement proceedings concerning the Charter must relate to the provision of Union law which triggers the applicability of the Charter.

Five of the 11 cases relate to asylum and migration.²⁴

Infringement Proceedings in the field of Asylum and Migration

In 2014, the Commission opened infringement proceedings against a Member State on the Return Directive²⁵ raising concerns on the length of detention, material detention conditions, the lack of free legal assistance to returnees in detention centres and the absence of judicial review of detention orders before six months and the limited review of decisions to extend the detention beyond six months (Articles 4, 6 and 47 of the Charter).

Infringement proceedings were also opened against a Member State for incorrect application of the Reception Conditions²⁶ and the Asylum Procedures²⁷ Directives. The Commission raised concerns on the duration of the asylum procedure, the effectiveness of remedies against negative asylum decisions, the lack of free legal assistance, the detention of certain categories of asylum seekers, which appears to be applied automatically without an individualised assessment, the right to an effective remedy against a detention decision, and free legal assistance in detention (Articles 6 and 47).

In 2014, the Commission examined how Member States applied the Charter when implementing EU legislation at the Union's external borders, in particular the *non-refoulement* principle (Articles 4, 6, 18 and 19). Issues of concern include the application and length of detention, detention conditions, the

²² See annex II 'Overview of the applications for preliminary rulings submitted in 2014 which refer to the Charter' in the Staff Working Document.

²³ 41 references referring to the Charter were introduced at the CJEU in 2013 and 2012.

²⁴ For more details, see the Staff Working Document annexed to this Report.

²⁵ Directive 2008/115/EC, OJ L 348/98.

²⁶ Directive 2003/9/EC, OJ L 31/18.

²⁷ Directive 2005/85/EC, OJ 326/12.

particular situation of minors, free legal assistance, and effective remedies under the asylum process in some Member States (Articles 6, 24 and 47 of the Charter).

Visa Code and appeal of a visa refusal decision

At the end of 2014, the Commission urged five Member States to act to ensure that appeals against a decision to refuse, annul or revoke a visa provide for access to a judicial body.

The Visa Code Regulation²⁸ sets out procedures and conditions for issuing visas for short stays and airport transit. It obliges Member States to provide for a right of appeal against a visa refusal/annulment/revocation. Article 47 of the Charter grants individuals the right to an effective remedy before a tribunal, when rights and freedoms under Union law are violated. National laws in the Member States concerned, however, only provided for the possibility of an appeal before non-judicial administrative authorities. The Commission considers this not to meet the standard of independent tribunal set out in Article 47.

Segregation of Roma children in education

In September 2014, the Commission opened infringement proceedings against a Member State for discrimination of Roma children in education, which is a violation of the Racial Equality Directive.²⁹ In discussions with the Commission, the Member State justified its actions by reference to CJEU case law related to the Charter. Consequently, the Commission deemed it necessary to clarify the interpretation of this case law in the letter of formal notice, specifically referring to Article 21 of the Charter, which prohibits discrimination based on race and ethnic origin.

3.2 The CJEU giving guidance to the Member States (preliminary rulings)

In 2014, by answering referrals for preliminary rulings, the CJEU continued to give guidance to national judges on the applicability of the Charter and the interpretation of its provisions.

Human dignity of asylum applicants

In December 2014, the CJEU ruled on questions referred by the Dutch Council of State in the case *A, B, C v Staatssecretaris van Veiligheid en Justitie*³⁰ on the interpretation of EU provisions on asylum in relation to methods used to assess the credibility of declared sexual orientation of asylum

²⁸ Regulation 810/2009/EC, OJ L 243/1.

²⁹ Directive 2000/43/EC, OJ L 180/22.

³⁰ CJEU judgment of 2.12.2014 in Joined Cases C-148/13, C-140/13 and C-150/13 *A, B, C v Staatssecretaris van Veiligheid en Justitie*.

applicants. The applicants said that they feared persecution in their countries of origin because of their homosexuality. The national court asked the CJEU if there are limits imposed by EU law as regards verification of the sexual orientation of asylum applicants. The CJEU held that the Asylum Qualification Directive³¹ and the Charter do impose limits: methods used by national authorities must respect fundamental rights, such as the right to respect for human dignity (Article 1) and the right to respect for private and family life (Article 7). Nothing can be required of applicants that would undermine their human dignity or personal integrity, such as intrusive, humiliating medical or pseudo-medical tests, intrusive questioning, or requiring/accepting photographic or video evidence of sexual practices. This judgment enables national authorities to assess applications in a more consistent manner, while ensuring full respect of fundamental rights.

Equality of arms in the field of consumer protection

The *Sanchez Morcillo*³² case — relating to Article 47— concerns the procedural rights of consumers in mortgage enforcement procedures, where the CJEU stressed the aspect of the equality of arms. It considered that national law was contrary to the Directive on unfair terms in consumer contracts³³ and to Article 47 of the Charter in cases where the law does not provide consumers with a right of appeal when the creditor does benefit from such a right in the reverse scenario .

The CJEU also emphasised the vulnerability of consumers exposed to the risk of losing their home. In *Kusinova*³⁴ it stated that, under EU law, the right to respect for home is a fundamental right guaranteed under Article 7 which national courts must consider when implementing the Directive on unfair terms in consumer contracts.

The ne bis in idem principle in the Convention Implementing the Schengen Agreement

In the *Zoran Spasic* case,³⁵ the CJEU assessed the compatibility of an enforcement condition laid down in the Convention implementing the Schengen Agreement (CISA) with the *ne bis in idem* principle under the Charter (Article 50).

The CISA provides that a person whose trial has been concluded in one State may not be prosecuted in another for the same acts (*ne bis in idem* principle). However, the CISA specifies that this principle is

³¹ Directive 2004/83/EC, OJ L304/12.

³² CJEU judgment of 17.7.2014 in Case C-169/14 *Sanchez Morcillo*.

³³ Directive 93/13/EEC, OJ L 95/29.

³⁴ CJEU judgment of 10.9.2014 in Case C-34/13 *KuJEU jud.*

³⁵ CJEU judgment of 18.7.2014 in Case C-129/14 PPU *Zoran Spasic*.

applicable only if the penalty has been enforced, is in the process of being enforced, or can no longer be enforced under the laws of the sentencing State (the 'enforcement condition'). Article 50 of the Charter however does not expressly refer to such a condition. The CJEU held the CISA enforcement condition not to be contrary to the Charter.

3.3. National case law quoting the Charter

National judges play a key role upholding fundamental rights and the rule of law. Research by the Fundamental Rights Agency³⁶ confirms that in 2014 Member State high courts continued referring to the Charter for guidance and inspiration, even in cases which fell outside the scope of EU law.

The Commission promotes dialogue and cooperation among judges. The new 'European Case Law Identifier'³⁷ will make it easier to understand the interpretation given to EU instruments by the highest national courts and provides data on the application of EU instruments in national courts. Another project co-funded by the EU — 'European Judicial Cooperation in Fundamental Rights Practice of National Courts' — includes a handbook for judges on judicial interaction techniques and a database of national judgments by Charter provision.³⁸

3.4 Charter awareness raising

In February 2015, a Eurobarometer Survey³⁹ showed that awareness of the Charter has only slightly improved over the years: only 14 % of respondents actually knew what the Charter is about (11 % in 2012 and 8 % in 2007). Some 51 % of respondents had heard about the Charter, but did not know exactly what it is (53 % in 2012 and 48 % in 2007). The Eurobarometer Survey also highlights the need to raise public awareness of where to turn to concerning fundamental rights issues. The Fundamental Rights Agency 'CLARITY' project⁴⁰ aims to give guidance about which body to turn to when fundamental rights are at stake (national human rights institution, equality body and/or ombudsperson). Another new project — *'Don't knock on the wrong door: CharterClick! A user-*

³⁶ FRA 2014 annual report, to be published on 22 May 2015.

³⁷ https://e-justice.europa.eu/content_european_case_law_identifier_ecli-175-en.do.

³⁸ <http://www.eui.eu/Projects/CentreForJudicialCooperation/Projects/EuropeanJudicialCooperationinFR/Documents.aspx>.

³⁹ Eurobarometer 416, 'The Charter of Fundamental Rights of the European Union', fieldwork between 16 and 18 February 2015 in all 28 EU Member States, available at http://ec.europa.eu/public_opinion/archives/flash_arch_420_405_en.htm#416

⁴⁰ <http://fra.europa.eu/en/project/2013/clarity-complaints-legal-assistance-and-rights-information-tool-you>.

*friendly tool to detect violations falling within the scope of the EU Charter of Fundamental Rights*⁴¹ — started in February 2015 and is co-funded under the Fundamental Rights and Citizenship (FRC) Programme.

The need to foster awareness on the Charter and identify specific training needs and best practices for public authorities were discussed at the December 2014 Conference *'The Charter of Fundamental Rights of the European Union: assessing and responding to the training needs of legal practitioners and public officials'*.⁴² Participants suggested the mapping of training strategies, experiences and tools to promote awareness and implementation of the Charter at local, regional, national and EU level and underlined the crucial role played by civil society and national human rights bodies. The EU funds training on the Charter for public authorities and will continue to do so in 2014-20.⁴³

4. European Convention of Human Rights

On 18 December 2014, the CJEU delivered its opinion on the draft agreement on EU accession to the ECHR. The Court identified problems as to its compatibility with EU law; it ruled the draft accession agreement incompatible with Article 6(2) TEU and the related Protocol No 8. The Court called for certain amendments: primacy of Union law in relation to the possibilities conferred by Article 53 of the Charter as regards stronger fundamental rights in Member States' constitutions; mutual trust between Member States in particular in the area of freedom, security and justice; relation with the new Additional Protocol 16 to the ECHR; preservation of the exclusive jurisdiction of the CJEU for deciding disputes between Member States concerning interpretation or application of the Treaties; certain aspects of the procedure before the European Court of Human Rights involving the EU; and judicial protection in the area of common foreign and security policy.

The Commission remains fully committed to EU accession to the ECHR. Accession will strengthen fundamental values, improve the effectiveness of EU law and enhance the coherence of fundamental rights protection in Europe. Accession to the ECHR remains of paramount importance. Moreover, there is a legal obligation for EU institutions to seek to conclude an accession agreement that complies

⁴¹ <http://www.eui.eu/Projects/CentreForJudicialCooperation/Projects/CharterClick/Charterclick.aspx>.

⁴² http://ec.europa.eu/justice/events/fundamental-rights-charter-training-2014/index_en.htm.

⁴³ Training of legal professionals on the Charter and information actions about the application of the Charter are priorities in the call for proposals under the FRC programme. Following the 2013 call for proposals, approximately €2.8m (25% of the total budget) were allocated to projects in this area; in 2012, it was €1.9m of €20.9m (7% of the total budget). Under the 2014-20 financial perspective, training on the Charter for judicial authorities and legal practitioners is catered for by the Justice Programme (2014-20). In addition, training and awareness-raising activities will also be supported under the Rights, Equality and Citizenship programme (2014-20) focusing on individual rights.

with requirements laid down in the Treaties, and in particular in Protocol 8 to the Lisbon Treaty. At present, the Commission is examining the best way forward.

Irrespective of the timing of accession, all EU institutions and Member States are obliged to interpret the Charter in light of existing jurisprudence of the European Court of Human Rights. Article 52(3) of the Charter contains the legal obligation to give the same meaning and scope to Charter rights and rights in the ECHR, insofar as Charter rights correspond to ECHR rights. The Explanations relating to the Charter of Fundamental Rights⁴⁴ list the Charter articles where both the meaning and scope are the same as the corresponding ECHR articles, and where the meaning is the same but the scope is wider. Whereas there is no legal obligation in the Charter to align interpretation with United Nations treaties, the CJEU does refer to UN instruments for interpretation of rights under EU law. An illustration is the definition of the concept of 'disability' where the CJEU in the *Kaltoft* case⁴⁵ was inspired by the wording of the UNCRPD, to which the EU is a party, in its assessment whether morbid obesity may amount to a 'disability' for the purposes of the Equal Treatment in Employment Directive.⁴⁶

5. Focus section: fundamental rights and the digital agenda

The digital revolution has created many opportunities for society, citizens and business. It has also raised concerns over the effective protection of fundamental rights within that environment. The explosion in the collection, use and distribution of personal data is just one example of new digital realities. Together with revelations about worldwide surveillance programmes, this shows the necessity to establish more efficient safeguards for fundamental rights, in particular the right to the protection of privacy and personal data.

The Commission is closely following global action⁴⁷ on fundamental rights in a digital society, such as the Council of Europe's guide on human rights for internet users.⁴⁸ Among the many issues raised are the need for equal access to the internet, the threat of discrimination of individuals by means of

⁴⁴ 2007/C 303/02, OJ C 303/17.

⁴⁵ CJEU judgment of 18.12.2014 in Case C-354/13 *Kaltoft*.

⁴⁶ Directive 2000/78/EC, OJ L 303/16.

⁴⁷ See, for example, current discussions on 'Big Data', as reflected in the US White House Report on Big Data and Privacy (http://www.whitehouse.gov/sites/default/files/docs/big_data_privacy_report_5.1.14_final_print.pdf), the French Conseil d'Etat Report on Digital Technology and Fundamental Rights (<http://www.conseil-etat.fr/content/download/33163/287555/version/1/file/Digital%20technology%20and%20fundamental%20rights%20and%20freedoms.pdf>) or the Italian Draft declaration of Internet Rights by the Study Committee on Internet Rights and Duties of Italy's Chamber of Deputies (http://www.camera.it/application/xmanager/projects/leg17/attachments/upload_file/upload_files/000/000/189/dichiarazione_dei_diritti_internet_inglese.pdf).

⁴⁸ See <http://www.coe.int/en/web/internet-users-rights/guide>.

profiling, and the asymmetry of power between those who hold data and those who intentionally or inadvertently supply it. New questions relate to intellectual property rights and duties of internet platforms relating to prevention and combating terrorism and organised crime.

The protection of personal data, as guaranteed by Article 8 of the Charter, gains in importance in the digital world. In January 2012, the Commission published proposals for a General Data Protection Regulation⁴⁹ and a Data Protection Directive for police and criminal justice authorities.⁵⁰ In its first reading on 12 March 2014, the European Parliament confirmed its support.⁵¹ The Commission continued to negotiate with its US counterparts on the Data Protection Umbrella agreement to protect personal data transferred between the EU and the US for law enforcement purposes, and the conditions of a new safe harbour regime as regards data transfers to the US.

The CJEU has underlined the need to protect but also balance fundamental rights correctly in the digital environment. In the *Digital Rights Ireland* case, the Court reiterated the EU institutions' obligations to respect the Charter in their activities, namely where they affect the right to privacy, private life and personal data protection. It declared the Data Retention Directive invalid because it disproportionately restricted rights to privacy and to the protection of personal data as guaranteed by the Charter. The Directive had required Member States to ensure that telecommunications service providers retain traffic and location data of their customers for between six months and two years and to make these data available, on request, to law enforcement authorities for the purposes of investigating, detecting and prosecuting serious crime and terrorism. In the *Google* case⁵² the CJEU clarified that Google, as a data controller established in the EU, is obliged to respect EU data protection law (articles 7 and 8 of the Charter) and therefore has to comply with requests to remove links to certain personal data, under certain circumstances ('right to be forgotten').

In his political guidelines to the European Parliament, President Juncker called for breaking down national silos in the regulation of telecoms, in copyright and data protection legislation, in the management of radio waves and in the application of competition law.⁵³ The Digital Single Market (DSM) strategy is one of the flagship initiatives of this Commission. Citizens' trust and confidence are

⁴⁹ Proposal for a regulation on the protection of individuals with regard to the processing of personal data and on the free movement of such data, COM(2012) 11 final.

⁵⁰ Proposal for a directive on the protection of individuals with regard to the processing of personal data by competent authorities for the purposes of prevention, investigation, detection or prosecution of criminal offences or the execution of criminal penalties, and the free movement of such data, COM(2012) 10 final.

⁵¹ European Parliament legislative resolution of 12 March 2014 (COM(2012) 0010 — C7-0024/2012 – 2012/0010(COD)).

⁵² CJEU Judgment of 13.5.2014 in Case C-131/12 *Google Spain and Google*.

⁵³ See President Juncker's Political Guidelines available at http://ec.europa.eu/priorities/digital-single-market/index_en.htm.

key pillars of this strategy and important pre-conditions of a fully functioning DSM. This includes strong and efficient protection of fundamental rights online. In addition, full enjoyment of rights in the DSM requires addressing the needs of persons with disabilities.

The Commission continuously follows developments in the protection of fundamental rights in all policy areas, as required by the Charter. Fundamental rights do not serve primarily to promote security or market-based policies but are in their own right central to the flourishing of an open and democratic society.

6. Conclusion

The Commission is committed to a high level of protection of fundamental rights in the EU. It seeks to ensure that all its legislative proposals and actions are fully compatible with the Charter.

In light of evolving threats to our societies, the Commission will ensure in its approach to security the full respect and promotion of fundamental rights. It also updates fundamental rights policies in the light of new developments, ranging from the digital agenda to challenges of migration, in line with case law of the CJEU and the European Court of Human Rights.

The Charter applies to EU institutions but also to Member States when they implement EU law. The Commission enforces respect of the Charter by Member States.

The Commission intends to promote fundamental rights across the EU, in particular with the first Annual Colloquium on Fundamental Rights, in October 2015.