

Compliance with the Charter of Fundamental Rights in Commission legislative proposals: methodology for systematic and rigorous monitoring

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PURPOSE : to set out a methodology for ensuring compliance with the Charter of Fundamental Rights in Commission legislative proposals.

CONTENT : The Charter was incorporated into the Treaty establishing a Constitution for Europe, signed on 29 October 2004. This document sets out a methodology for ensuring the Charter is properly implemented in Commission proposals, which methodology has a threefold objective:

-to allow Commission departments to check systematically and thoroughly that all the fundamental rights concerned have been respected in all draft proposals;

-to enable Members of the Commission, and the Group of Commissioners on Fundamental Rights, Anti-discrimination and Equal Opportunities in particular, to follow the results of the scrutiny and to promote a “fundamental rights culture”;

-to make the results of the Commission’s monitoring of fundamental rights more visible to other institutions and to the general public. The Commission should be seen to set an example, which will also give it credibility and authority in monitoring respect for fundamental rights in the activities of the two branches of the legislature.

The checks are already carried out when the lead department draws up the draft and, in particular, during the interdepartmental consultation where the Legal Service checks for compliance as an integral part of its verification of legality.

However, to further reinforce and systematise the practical aspects of scrutiny at the interdepartmental consultation stage, fundamental rights will be brought into even sharper focus in two key documents submitted together with the draft legislative proposal:

-the impact assessment, which should include as full and precise a picture as possible of the different impacts on individual rights

-the explanatory memorandum, which for certain legislative proposals should contain a section on the legal basis for compliance with fundamental rights.

The impact assessment provides the Commission, right from the start of the drafting process, with a complete picture of the various impacts which the process can have on the individuals and groups whose rights may be involved, depending on the different options envisaged.

On the other hand, an impact assessment cannot be used to contain the legal scrutiny, i.e. the legal definition of the impacts identified in the light of the provisions of the Charter and the European Convention on Human Rights, and the case-law. The legal scrutiny calls for specific expertise and should concern an advanced draft proposal. It should as far as possible be initiated within the lead department

itself and then continued during the interdepartmental consultation procedure through the formal involvement of the Legal Service; it should if necessary be summarised in the explanatory memorandum, and thus be made publicly visible.

The lead department will also ensure that the Directorate-General for Justice, Freedom and Security is involved in the interdepartmental consultation when a proposal is liable to raise issues relating to fundamental rights, notably in the light of the impact assessment. Similarly, it will ensure that the relevant external relations Directorate-General is associated where a proposal might affect the fundamental rights of third-country nationals outside the Union.

The Legal Service will keep the Group of Commissioners regularly informed of significant cases where fundamental rights have been subject to internal monitoring. In very special cases where proposals require a careful balance between several opposing fundamental rights, the Group may also produce policy guidelines, within the margins for political discretion afforded by the provisions of the Charter.