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

2005/2169(INI) - 29/04/2009 - Follow-up document

This Communication aims to assess the practical operation of the methodology for a systematic and rigorous monitoring of compliance with the Charter of fundamental rights.

In presenting the 2005 Communication on a methodology for systematic and rigorous monitoring of compliance with the Charter of Fundamental Rights, the Commission underlined its determination to "lock in a culture of Fundamental Rights in EU legislation". By setting up the methodology, designed to ensure that Commission departments **check systematically** and thoroughly that all the fundamental rights concerned have been respected in all draft proposals, the 2005 Communication enshrined the practical means by which intentions would be matched by concrete performance.

The Commission undertook to prepare an appraisal of the internal monitoring in 2007. This is the purpose of the present report, the elaboration of which was delayed in order to take into account two new elements: the coming into being of the Fundamental Rights Agency and the 2009 revision of the Commission's Impact Assessment Guidelines.

Main lessons learned: experience over the years since the adoption of the 2005 Communication has demonstrated that fundamental rights issues can arise in many disparate areas. A few examples can be mentioned to show the diversity of topics. It is, however, the ever growing importance, in terms of legislative activity, of the area of **Justice, Freedom and Security** (this area includes the fight against criminality and , in particular, terrorism, immigration, asylum, and border control) which has, inevitably, brought into sharp focus that the Community and Union are increasingly touching on areas which, very directly, raise fundamental rights issues. Many of the above issues were reflected in the "asylum package", with the proposal amending the Reception Conditions Directive. The most sensitive issues raised in terms of respect for fundamental rights were those of the detention of asylum seekers, the right to an effective remedy and the rights of the child.

The experience of the asylum package demonstrates that the methodology to monitor the respect of fundamental rights implies not only a procedural element but also a substantive element. The methodology is not an end in itself. Respect for fundamental rights is not simply a mechanism or a procedural obligation; it is a substantive obligation.

Stock-taking: experience over the years since the adoption of the 2005 Communication has demonstrated that the Commission has had to make difficult judgments of necessity and proportionality and that the methodology has had to confront delicate questions as to whether the solutions arrived at meet the required standards. The Commission believes that **the standards of necessity and proportionality have been met in its proposals**; its commitment to a culture of fundamental rights respect is real and of substance.

The report also assesses the improvement of the method used by the Commission to improve the taking into account of fundamental rights: in particular, the establishment of new Impact Assessment Guidelines and greater attention paid to this area in the recitals of the proposals.

The report highlights the setting up of the Agency for Fundamental Rights, which aims to support, and indeed reinforce, the Commission's methodology. The reports and surveys of the Agency could be used as input in the preparation of Commission initiatives and actions. The Agency should also be invited to participate in the consultation process which is normally launched for new possible initiatives.

Moreover, the Communication stated that, as a last resort, the Commission would reserve the right to bring **annulment proceedings** against an act which it considered incompatible with fundamental rights. To try to avoid this happening, the Commission states that it will use all means at its disposal to ensure respect for fundamental rights but it draws the attention of the **co-legislators** to their responsibilities in this matter. However, as a last resort, the Commission is ready to contemplate an annulment action.

In conclusion, experience since 2005 has shown that the methodology is well conceived as regards the objective sought but that its practical application needs to be reinforced. The elements outlined in this report, the revision of the Impact Assessment Guidelines, the better targeting of recitals and the harnessing of the Agency, all have their role to play in the better application of the methodology. However, perhaps the most important element which needs to be worked upon is the **human element**. The fundamental rights reflex has to be promoted in the services of the Commission where proposals and initiatives are created and a "**fundamental rights culture**" fostered from the earliest stages of the conception of a Commission proposal. Lastly, the commitment to the respect for fundamental rights must be a common goal of all the Institutions involved in the legislative process.